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# TRIAL

OF

# Alexander Addison, Esq.

PRESIDENT OF THE COURTS OF COMMON PLEAS, IN THE CIRCUIT CONSISTING OF THE COUNTIES OF WESTMORELAND, FAYETTE, WASHINGTON AND ALLEGHENY,

## ON AN IMPEACHMENT,

BY THE HOUSE OF REPRESENTATIVES,

*BEFORE THE SENATE OF THE COMMONWEALTH OF PENNSYLVANIA.*

TAKEN IN SHORT HAND BY

*THOMAS LLOYD.*

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*Second edition, with additions.*

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# APPENDIX.

[A.]

2 *Bac.* 160.

JUSTICES of the peace, in their ſeſſions, have no juriſdiction one over the other, according to that rule *inter pares non eſt poteſtas:* therefore they cannot amerce a juſtice for his non-attendance, nor bind a brother juſtice to his good behavior for uſing ſuch expreſſions in court, for which, if he were a private perſon, he might be committed, or bound to his good behavior.

[B.]

Chriſtian's Notes on Blackſtone, 571.

In the houſe of commons the ſpeaker never votes but when there is an equality without his caſting vote, which in that caſe creates a majority; but the ſpeaker of the houſe of lords has no caſting vote, but his vote is counted with the reſt of the houſe; and in the caſe of an equality, the non-contents or negative voices have the ſame effect and operation as if they were in fact a majority. (Lords' Journ. 25th June, 1661.) Lord Mountmorris ſays, that the houſe of lords in Ireland obſerve the ſame rule; and that in caſes of equality, *ſemper præſumitur pro negante.* (1 vol. 105.) Hence the order in putting the queſtion on appeals and writs of error is this: "Is it your lordſhip's pleaſure that this decree or judgment ſhall be reverſed;" for if the votes are equal, the judgment of the court below is affirmed. (Ib. 2 vol. 81.) Here it may not be improper to obſerve, that there is no caſting voice in courts of juſtice; but in the ſuperior courts if the judges are equally divided, there is no decision, and the cauſe is continued in court till a majority concur. At the ſeſſions the juſtices, in caſe of equality, ought to reſpite the matter till the next ſeſſion; but if they are equal one day, and the matter is duly brought before them on another day in the ſame ſeſſions—and if there is then an inequality, it will amount to a judgment, for all the time of the ſeſſions is conſidered as but one day. A caſting vote ſometimes ſignifies the ſingle vote of a perſon, who never votes but in the caſe of an equality; ſome-

times the double vote of a perſon, who firſt votes with the reſt, and then, upon an equality, creates a majority by giving a ſecond vote.

[C.]

*4 Burns, 184, 15th edition.*

It ſeemeth certain, that the ſeſſions hath no authority to amerce any juſtice, for his non-attendance at the ſeſſions, as the judges, of aſſize may, for the abſence of any ſuch juſtice at the gaol delivery: for it is a general rule, that *inter pares non eſt poteſtas*, it being reaſonable rather to refer the puniſhment of of perſons in a judicial office, in relation to their behavior in ſuch office, to other judges of a ſuperior ſtation, than to thoſe of the ſame rank with themſelves. And therefore it ſeems to have been holden, that if a juſtice of the ſeſſions, who is not of the quorum ſhall uſe ſuch expreſſions towards another who is of the quorum, for which if he were a private perſon he might be committed or bound to his good behavior, yet the ſeſſions hath no authority to commit him, or to bind him to his good behavior. And yet it ſeems to be agreed, that if a juſtice give juſt cauſe to any perſon to demand the ſurety of the peace againſt him, he may be compelled by any other juſtice to find ſuch ſecurity; for the public peace requires an immediate remedy in all ſuch caſes.

[D.]

*Procter's caſe, 12 Cook, Rep. 118.*

In an information preferred in the Star Chamber by the attorney-general, againſt Stephen Procter, Berkenhead and others, for ſcandal and conſpiracy of the earl of Northampton, and the lord Wooton. At the hearing of this caſe, were preſent eight lords, Scil the chief baron, the two chief juſtices, two biſhops, one baron, the chancellor of the exchequer, and the lord chancellor. And the three chief juſtices and the temporal barons condemned ſir Stephen Procter, and fined and impriſoned him: but the lord chancellor, the two biſhops and the chancellor of the exchequer acquitted him. And the queſtion was, if ſir Stephen Procter ſhall be condemned or acquitted; and it ſeemed to ſome of the clerks, *prima facie*, that the better ſhall be taken for the king, and that he ſhall be condemned. But others were of the contrary opinion, and hereupon the matter was referred to the two chief juſtices, calling to their aſſiſtance the king's learned counſel. And firſt they reſolved that this queſtion muſt be determined by the precedents of the court of Star Chamber, for that court is againſt the rule and order of all other courts, for in the king's bench,

the common pleas, or the exchequer, or in the exchequer chamber, where all the juſtices are aſſembled, if the juſtices are equally divided, no judgment can be given; and ſo it is in the court of parliament; and, therefore, this courſe ought to be warranted by the cuſtom of the court. And as to that, two precedents only were produced for the maintenance of the ſaid cuſtom, viz. one in the Hillary term, 30, El. between Gibſon, plaintiff, Griffith and others, defendants: where the complaint was for a riot, and at the hearing of the caſe, there were 8 preſent; four gave their judgments that the defendants were guilty: but the other four, whereof the lord chancellor was one, pronounced the defendants not guilty, and no ſentence of condemnation was ever entered, becauſe the lord chancellor was one of the four who acquitted them. The other was Hill. 45. Eliz. in an information by the attorney-general againſt Catharine and others, for forging of a will, and a miſdemeanor for procuring a fraudulent deed to defeat the queen of her eſcheat; And eight were in preſence in the hearing of the cauſe, whereof four found the defendants guilty of forgery, and did inflict the puniſhment according to the ſtatute of the 5 Eliz. but the others, whereof the lord chancellor was one, gave ſentence that the defendants were guilty of the miſdemeanor, and not of the forgery, and impoſed a fine of £.500 only; which decree was entered according to the lord chancellor's voice, although the ſentence on the other ſide was more beneficial for the king: and no other precedent could be found in this caſe, the which I have reported this term.

[E.]

*State Trials, p.* 168. *Fitzharris' caſe.*

After the arguments, the chief juſtice, in ſhow, at leaſt, very favorably, offers the priſoner's counſel liberty to amend the plea, if they could; which they (apprehending as they had reaſon, for I think none can ſhew how it might have been mended, rather a catch than a favor) refuſed to do; whereupon the court took time to conſider of it; and on the 11th of May, there being a great auditory, rather to hear how the judges would bring themſelves off, than to know what the law of the plea was, the chief juſtice, without any reaſons, delivered the opinion of the court, upon conference had with other judges, that his brothers Jones, Raymond and himſelf, were of opinion that the plea was inſufficient; his brother Dolben not reſolved, but doubting concerning it, and therefore awarded the priſoner ſhould plead to the indictment, which he did, *not guilty;* and his trial ordered to be the next term.

I think it would puzzle any perſon to ſhew, if ever a court of Weſtminſter-Hall thought a matter to be of ſuch difficulty, as fit to be argued, that they gave their judgments afterwards without the reaſons: 'Tis true, that the courts of civil law allow debates amongſt the judges to be private among themſelves; but the proceedings at common law always were, and ought to be, in *aperta curia*. Had this practice taken place heretofore, as it hath of late (but all ſince this precedent) no man could have known what the law of England was, for the year books and reports are nothing but a relation of what is ſaid by the counſel and judges in giving judgment, and contain the reaſons of the judgment, which are rarely expreſſed in the record of the judgment; and it is as much the duty of a judge to give the reaſons why he doubts, as it is of him who is ſatisfied in the judgment. Men ſometimes will be aſhamed to offer thoſe reaſons in public, which they may pretend, ſatisfy them, if concealed; beſides, we have a maxim in law undeniable, and of great uſe, that any perſon whatever may rectify or inform a court or judge publicly or privately, as *amicus curiæ*, a friend to the court, or a friend to juſtice: But can that be done, if the ſtanders-by know not the reaſon upon which the court pronounce their judgment? Had the three judges, who were clear in their opinion, given their reaſons of that opinion, perhaps ſome of the ſtanders-by might have ſhewed reaſons unthought of by them, to have made them ſtagger in, if not alter that opinion; or if juſtice Dolben had given the reaſon of his doubt, perhaps a ſtander-by might have ſhewn him a reaſon, unthought of by him, which would have made him poſitive that the plea was or was not a good plea.

[F.]

*Eunomus, 3 vol. 3d Dial.* 229, 230.

But, ſecondly; in the courſe and management of a trial, other perſons are likewiſe under an oath, and have their duties incumbent on them alſo. Now, without looking into the oath of a judge, it will be eaſily underſtood to be inconſiſtent with his duty and his oath, to be a mere cypher on the bench; a judge, however, will be little more than a cypher, either if he ſits and ſays nothing, or if what he does ſay is to go for nothing. I have already inſiſted, the jury's unacquaintance with law, makes it neceſſary for the judge to tell them what the law is, in the caſe before them. He tells it them ſurely to very little purpoſe, if they think themſelves afterwards at liberty to determine otherwiſe.

[G.]

*Gentlemen of the Jury,*

Reſuming thoſe judical duties which on a former occaſion I have been prevented to diſcharge, under the exiſting circumſtances, I find it incumbent upon me to offer you now a few obſervations.

That the powers which you are veſted with, as the grand inqueſt of Allegheny county, are extenſive and tranſcendant, is a truth which every one of you cannot be ignorant of; that in the exerciſe of theſe powers, a ſpacious ſphere is allowed to your diſcretion, muſt be equally well known.—Your country leaves to your conſcience and your judgment, under the guidance of the law and aſſiſted with the direction of the court, to enquire and ſearch into all and every infringement of the laws; likewiſe to preſent or find bills againſt any body you have reaſon to believe to be a public offender or tranſgreſſor, without reſpect of perſons, and againſt none but thoſe whom you believe to have tranſgreſſed.

Unfortunately, experience teaches us, that with men in general, paſſions take often the lead of duties; there are but a few informers, indeed, that ſtep forward merely from a genuine ſenſe of duty; a ſpirit of vengeance or of party (the general cauſes of malice) is often at the bottom of the denunciation. It behoves a good jury to uſe all the ſagacity they are poſſeſſed of, in attending and weighing all circumſtances; likewiſe in diſtinguiſhing between the witneſſes that deſerve credibility, and thoſe that deſerve none: for, if it is highly important that the tranſgreſſors ſhould not eſcape, it would be lamentable indeed, ſhould an innocent and perhaps an indigent man fall a victim to a vexatious proſecution. Thus, gentlemen, your good ſenſe and uprightneſs leads me to conſider you under two points of view; that is as a body of ſagacious men, to whoſe vigilance none that are guilty of crimes or miſdemeanors will eſcape, and as an aſylum and ſanctuary for the innocent and perſecuted.

I make no doubt, but you know as well as me, that a virtuous and an honeſt juror being conſcious of the foibles attending human nature, and of the ſacredneſs of the obligations he ſtands under with reſpect to his God and his country, never omits to ſcrutinize into his heart and diſpel from it, all noxious paſſions that may have crept in, and reſtore himſelf to that equanimity and evenneſs of feeling, the true and only ſtandard to try the ſcales of juſtice by.

In vain the wiſe legiſlators would exhauſt the treaſures of meditation and experience, in framing the moſt wholeſome laws, without the uprightneſs of the judiciary to carry a pure ſubſtance through their channel; they would not be more uſeful than lofty ſtocks of wheat offering the appearance of long ears, but being actually blaſted in their bloſſoms and containing no grain. Thus all ſubſtantial liberty, and all the bleſſings that flow from it; reſting almoſt entirely upon the purity of the judiciary. Every care ought to be taken, every endeavour ought to be exerted, to cultivate and improve the calmneſs, the liberality, the mutual confidence of judges and jurors.

God forbid that I ſhould ever attempt to throw the alarm amongſt you, or diſturb your feelings in the leaſt by uſeleſs denunciations; ſhould the illuminees of Germany and jacobins of France be as dangerous to the ſocieties they live in, or as wickedly bent upon deſtroying or undermining every civil and religious inſtitution, as they have been repreſented to be by Barruel the Jeſuit, and others. What could I poſſibly tell you on the ſubject, preſerving my official capacity? What could a jury of Allegheny do about theſe things? Have not theſe countries their own laws, and magiſtrates? Have we any juriſdiction over them? For my part, I cannot expoſe myſelf ſo much as to forget that I ſtand here as a judge, and not as a ſpeculatiſt or hiſtorian? that this preſent time is at the diſpoſal of the laws, and not at that of my fancy or imagination. God forbid, above all, that I ſhould ſingle out any ſet of men among fellow-citizens, and inſinuate that they are a ramification of ſuch German and French illuminees and jacobins, and that the mean courſe of the laſt general election throughout the United States, evinces that this ramification is growing powerful and influential.

As the barbarous and gothic ſyſtem of diviſion of nations into caſts, is happily unknown to the conſtitutions of our country; as we have no ambitious and privileged nobility, nor a proud and corrupt clergy, armed with an undue temporal authority, to encounter with, to reſiſt, or to cruſh: ſo we have no reaſon to form ourſelves into aſſociations againſt each other: Our laws, our government, hold up all and every one of us into their boſoms, with an equal tenderneſs and care. In ſuch ſociety as ours is, every thing leads towards union and mutual friendſhip; here the philoſopher, far from being at variance with the clergyman, ſupports and reſpects him; and both purſue ultimately the ſame object, that is, the happineſs of mankind. If we are divided in opinion upon any political

points, it cannot rationally be upon ſuch that are of conſiderable importance. Therefore if party ſpirit exiſts in this country, it cannot be of an alarming nature, and never ought to go to the length of rancor and illiberality.

I confeſs that I have read very little of Barruel's hiſtory of the jacobins and illuminees; nay, I do not wiſh to read more of it; I know too well that impartiality and accuracy is ſeldom to be found in an hiſtory written by an exile, in the middle of the conflict of the moſt violent parties ever heard of.

I have indeed a particular reaſon to repoſe but a very little confidence in Jeſuits, eſpecially as hiſtorians. I recollect that in the early part of my life, I did read the hiſtory of Charles I, of England, written by another French Jeſuit. Had I truſted to his account, I ſhould have believed that the covenanters of Scotland were as bad and dangerous men as Barruel could ever repreſent the illuminees of his imagination. Had I ever denounced parties to a jury, I could not help thinking that I ſhould have perverted the uſe of judicial power to a wrong and dangerous end. It is with deep regret that I have now ſpoke upon the topic of parties; it is not from choice, but from neceſſity; not to act, but to counteract.

May this circumſtance be the only one in my life wherein I feel myſelf under the obligation of addreſſing a jury, upon ſo delicate and perplexing a ſubject.

[H.]

*Fitzharris's caſe. Vide State Trials, ed. of* 1737, *vol.* I, *p.* 404.

Edward Fitzharris, being committed for a treaſonable libel, reſpecting the king and government, on the 28th of February, 1680; and the parliament meeting at Oxford on the 21ſt of March following, the commons impeached Fitzharris, of high treaſon, in general terms: But the lords finding no reaſon for this extraordinary way of proceeding, when he might be tried in the ordinary courts of law, rejected the impeachment: Whereupon the commons reſolved, that it was the undoubted right of the commons to impeach any peer or commoner before the lords; and that the lords refuſing to proceed on this impeachment of Fitzharris, was a denial of juſtice, and a violation of the conſtitution of parliament; an obſtruction to the further diſcovery of the plot, and of great danger to his majeſty's perſon, and the Proteſtant religion: And that if any inferior court ſhould proceed againſt Edward Fitzharris, or any other perſon, lying under an impeachment of parliament, it would be a high breach of privilege: But the king

diſſolving the parliament the ſame day, being the 28th of March, 1681, the miniſtry directed Fitzharris to be tried at the king's bench bar.

[I]

*Wooddeſon*, 596.

It is certain that magiſtrates and officers entruſted with the adminiſtration of public affairs may abuſe their delegated powers to the extenſive detriment of the commuuity, and at the ſame time in a manner not properly cognizable before the ordinary tribunals. The influence of ſuch delinquents, and the nature of ſuch offences, may not unſuitably engage the authority of the higheſt court, and the wiſdom of the ſageſt aſſembly. The commons, therefore, as the grand inqueſt of the nation, became ſuitors for penal juſtice; and they cannot conſiſtently either with their own dignity, or with ſafety to the accuſed, ſue elſewhere but to thoſe who ſhare with them in the legiſlature.

On this policy is founded the origin of impeachments.

*Wooddeſon*, 601-2.

All the king's ſubjects are impeachable in parliament, but with this diſtinction, that a peer may be ſo accuſed before his peers of any crime, a commoner (though perhaps it was formerly otherwiſe) can now be charged with miſdemeanors only, not with any capital offence; for when Fitzharris, in the year 1681, was impeached of high treaſon, the lords remitted the proſecution to the inferior court, though it greatly exaſperated the accuſers. Such kinds of miſdeeds as peculiarly injure the commonwealth by the abuſe of high offices of truſt, are the moſt proper and have been the moſt uſual grounds for this kind of proſecution. Thus, if a lord chancellor be guilty of bribery, or of acting groſsly contrary to the duty of his office, if the judges miſlead their ſovereign by unconſtitutional opinions, if any other magiſtrate attempts to ſubvert the fundamental laws, or introduce arbitrary power, theſe have been deemed caſes adapted to parliamentary enquiry and deciſion. So where a lord chancellor has been thought to have put the ſeal to an ignominious treaty, a lord admiral to neglect the ſafeguard of the ſea, an ambaſſador to betray his truſt, a privy counſellor to propound or ſupport pernicious and diſhonorable meaſures, or a confidential adviſer of his ſovereign to obtain exorbitant grants or incompatible employments. Theſe imputations have properly occaſioned impeachments, becauſe it

is apparent how little the ordinary tribunals are calculated to take cognizance of ſuch offences, or to inveſtigate and reform the general policy of the ſtate.

[J.]

*Com. Dig. tit. parl. let. L.* 37.

Lord Bacon, chancellor, was impeached for bribery.

The duke of Buckingham for the ſale and purchaſe of offices.

The lord Finch for unlawful methods of enlarging the foreſt when affiſtant to the juſtices in Eyre.

For threatening other judges to ſubſcribe to his opinion:

For delivering opinions which he knew to be contrary to law:

For drawing the buſineſs of the court to his chamber.

The fourth, fifth and ſixth articles againſt lord keeper Finch, were as follow:

4. That being chief juſtice of the common pleas, in the year 1635, he drew up the queſtions and opinions concerning ſhip-money, and ſolicited and procured the judges to ſign them.

5. That he ſubſcribed an extra-judicial opinion relating to ſhip-money himſelf, and preſſed the juſtices Crooke and Hutton to ſign them againſt their conſciences.

6. That he delivered his opinion againſt Mr. Hampden in the exchequer chamber, in the caſe of ſhip-money, and threatened the ſaid judges, to induce them to deliver the like opinion, and urged baron Denham to retract the opinion he had given for Mr. Hampden.

[K.]

The report of the committee of the houſe of commons appointed to examine the proceedings of the judges, made December 23, 1680. 32. Car. 2.

This committee being informed, that in trinity term laſt, the court of king's bench diſcharged the grand jury that ſerved for the hundred of Oſſulſton, in the county of Middleſex, in a very unuſual manner; proceeded to enquire into the ſame, and found by the information of Charles Umfreville, Eſq. a foreman of the ſaid jury, Edward Proby, Henry Gerard and

John Smith, gentlemen, alſo of the ſaid jury; that on the 31ſt of June laſt the conſtables attending the ſaid jury were found defective in not preſenting the Papiſts as they ought, and thereupon were ordered by the ſaid jury to make further preſentments of them on the 26th following, on which day the jury met for that purpoſe, when ſeveral peers of this realm, and other perſons of honor and quality, brought them a bill againſt James, duke of York, for not coming to church: But ſome exceptions being taken to that bill, in that it did not ſet forth the ſaid duke to be a Papiſt. Some of the jury attended the ſaid perſons of quality, to receive ſatisfaction therein; in the mean time, and about an hour after they had received the ſaid bill, ſome of the jury attended the court of king's bench with a petition, which they deſired the court to preſent in their name unto his majeſty for the fitting of this parliament. Upon which the lord chief juſtice Scroggs raiſed many ſcruples. And on pretence that they were not all in court, (though twenty of the jury had ſubſcribed the petition) ſent for them, ſaying they would diſpatch them preſently. The jury being come, and their names called over, they renewed their deſire that the court would preſent their petition: But the chief juſtice aſked, if they had any bills. They anſwered they had; but the clerks were drawing them into form. Upon which the chief juſtice ſaid they would not make two works of one buſineſs; and the petition being read, he ſaid, This was no article of their charge, nor was there any act of parliament that required the court to deliver the grand jury's petition; that there was a proclamation about them, and that it was not reaſonable the court ſhould be obliged to run on their errands, and he thought it much, that they ſhould come with a petition to alter the king's mind declared in the news book. The jury ſaid, they did it not to impoſe on the court, (but as other juries had done) with all ſubmiſſion they deſired it. But the court refuſed bidding the crier return them their petition: And Mr. juſtice Jones told them, they had meddled with matters of ſtate not given them in charge; but preſented no bills of the matters given in charge. They anſwered as before. They had many before them that would be ready in due time. Notwithſtanding which, the ſaid juſtice Jones told them, they were diſcharged from further ſervice.

But Philip Ward (the clerk that attended the ſaid jury) cried out, no, no; they have many bills before them, for which the court underſtanding (as it ſeems to this committee) a ſecret reaſon which the clerk did not, reproved him, aſking, if

he or they were to give the rule there. The crier then told the court they would not receive their petition; the chief juſtice bid him let it alone; ſo it was left there, and the jury returned to the court-houſe, and there found ſeveral conſtables with preſentments of Papiſts and other offenders, as the jury had directed them on the 21ſt before; but could not now receive the ſaid preſentments, being diſcharged. Whereby much buſineſs was obſtructed, though none of the ſaid informants ever knew the ſaid jury diſcharged before the laſt day of the term, which was not till four days after. And it further appeareth to the committee, by the evidence of Samuel Aſtrey, Jaſper Waterhouſe, and Philip Ward, clerks that have long ſerved in the ſaid court. That they were much ſurprized at the ſaid diſcharging of the jury, in that it was never done in their memory before. And the rather becauſe the ſaid Waterhouſe, as ſecondary, conſtantly enters on that grand jury's paper that the laſt day of the term is given them to return their verdict on, as the laſt day but one is given to the other two grand juries, of that county: which entry is as followeth—

*Trinit.* 32. *Car.* 2.

## MIDDLESEX, OSSULSTON HUNDRED.

*Juratores habent diem ad Veredictum ſuum reddendum uſque diem Mercurii proxime poſt tres. Septimanas Sanctæ Trinitatis.*

Being the laſt day of the term, and ſo in all other terms the laſt day is given; which makes it appear to this committee, that they were not in truth diſcharged for not having their preſentments ready, ſince the court had given them a longer day, but only to obſtruct their farther proceedings: And it appeareth by the evidence aforeſaid, to this committee, that the four judges of that court were preſent at the diſcharging of the ſaid jury, and it did appear that any of them did not diſſent therein; upon conſideration whereof the committee, came to this reſolution.

Reſolved that it is the opinion of this committee, that the diſcharging of the grand jury of the hundred of Oſſulſton in the county of Middleſex by the court of kings bench in trinity term laſt, before the laſt day of the term and before they had finiſhed their preſentments, was illegal arbitrary and a high miſdemeanor.

The reſolutions of the houſe of commons upon the ſaid report.

1. That it is the opinion of this houſe that the diſcharging of the grand jury of the Hundred Oſſulſton, in the county of Middleſex, by the court of king's bench, in Trinity term laſt, before the laſt day of the term, and before they had finiſhed their preſentments, was arbitrary and illegal, deſtructive to public juſtice, a manifeſt violation of the oaths of the judges of that court, and a means to ſubvert the fundamental laws of this kingdom, and to introduce popery.

Reſolved, That ſir William Scroggs, knight, chief juſtice of the court of king's bench, be impeached upon the ſaid report, and the reſolutions of the houſe thereupon.

The ſecond article againſt chief juſtice Scroggs was as follows:

That he arbitrarily diſcharged the grand jury of Middleſex, in Trinity term, 1679, before they had made their preſentments, and found ſeveral bills of indictment before them; by which illegal diſcharge of the ſaid jury, the courts of juſtice was maliciouſly ſtopped, the preſentments of many Papiſts and other offenders were obſtructed, and in particular a bill of indictment againſt James, duke of York, for abſenting himſelf from church, which was then before them, was prevented from being proceeded upon.

[L.]

2 *Bac.* 97.

The judges are bound by oath to determine according to the known laws and ancient cuſtoms of the realm, and their rule herein muſt be the judicial deciſions and reſolutions of great numbers, of learned, wiſe and upright judges, upon variety of particular facts and caſes, and not their own arbitrary will and pleaſure, or that of their prince.

But though they are to judge according to the ſettled and eſtabliſhed rules and ancient cuſtoms of the nation approved for many ſucceſſions of ages, yet are they freed from all proſecutions for any thing done by them in court, which appears to have been an *(d)* error of their judgment.

*(d) Where for wilful corruption they have been complained of in the Star chamber. Vide Vaugh,* 139. *And may ſtill be called to an account in parliament. Hawk. P. C. c.* 72. *S.* 6. 12. *Co.* 24.

## [M.]

*Vaugh.* 139.

If a court, inferior or ſuperior, hath given a falſe or erroneous judgment, is any thing more frequent than to reverſe ſuch judgments by writs of falſe judgment, of error or appeals, according to the courſe of the kingdom.

If they have given corrupt and diſhoneſt judgments they have in all ages been complained of to the king in the Star chamber, or to the parliament.

Andrew Horne, in his Mirror of Juſtice, mentions many judges puniſhed by king Alfred before the conqueſt, for corrupt judgments, and their particular names and offences, which could not be had but from the records of thoſe times. Our ſtories mention many puniſhed in the time of Edward the firſt, our parliament rolls of Edward the third's time, of Richard the ſecond's time, for the pernicious reſolutions given at Nottingham caſtle, afford examples of this kind. In latter times the parliament journals of 18th and 21ſt Jac. the judgment of the ſhip-money in the time of Charles the firſt queſtioned, and the particular judges impeached.

## [N.]

1 *Hawk.* 192. *c.* 73. § 6.

Sect. 6. And as the law has exempted jurors from the danger of incurring any puniſhment in reſpect of their verdict in criminal cauſes, it hath alſo freed the judges of all courts of record, from all proſecutions whatſoever, except in the Parliament, for any thing done by them openly in ſuch courts as judges. For the authority of a government cannot be maintained unleſs the greateſt credit be given to thoſe who are ſo highly entruſted with the adminiſtration of public juſtice; and it would be impoſſible for them to keep up in the people that veneration of their perſons, and ſubmiſſion to their judgments, without which it is impoſſible to execute the laws with vigor and ſucceſs, if they ſhould be continually expoſed to the proſecutions of thoſe whoſe partiality to their own cauſes would induce them to think themſelves injured. Yet if a judge will ſo far forget the dignity and honor of his poſt as to turn ſolicitor in a cauſe which he is to judge, and privately and extrajudicially tamper with witneſſes, or labor jurors, he hath no reaſon to complain if he be dealt with according to the ſame capacity to which he ſo baſely degrades himſelf.

A crime or misdemeanor is an act committed or omitted in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors, which properly speaking are mere synonimous terms; though, in common usage, the word "crimes" is made to denote such offences as are of a deeper and atrocious dye, while smaller faults and omissions of less consequence, are comprized under the gentler name of "misdemeanors" only.

# TRIAL

OF

# *ALEXANDER ADDISON,*

ON AN IMPEACHMENT BEFORE THE SENATE OF THE COMMONWEALTH OF PENNSYLVANIA, IN JANUARY 1803.

## INTRODUCTION.

ON the 11th January, 1802, Mr. M'Maſters, Member of the Houſe of Repreſentatives, from the county of Allegheny, preſented a petition from ſundry inhabitants of Allegheny county, as follows:

*The* HONORABLE *the* REPRESENTATIVES *of the State of Pennſylvania.*

The repreſentation and petition of ſundry inhabitants of the Weſtern Country,

HUMBLY SHEWETH,

That we are ſenſible of the great difficulty of the ſituation of a judge, and the tenderneſs and delicacy with which his character ought to be touched, or complaint made. But for a conſiderable time, unfavorable impreſſions have exiſted with regard to ALEXANDER ADDISON, preſident of this diſtrict; as oppreſſive, tyrannical and partial in the adminiſtration of juſtice, and guilty of great abuſes and indelicacies as a man, unbecoming his high ſtation and truſt. So that it becomes neceſſary, equally for his credit, as for the ſafety of the people, that this matter ſhould receive examination; which can be done only under an authority, which has power to call for witneſſes, and collect teſtimony. That authority is your Houſe, in which the conſtitution veſts the right of impeaching or demanding the removal of judicial officers. We ſolicit therefore, that you appoint a committee of your Houſe, or other fit perſons for this purpoſe, in order to report to the next Aſſembly;

who may take the facts, that may be found, into conſideration, and proceed accordingly. And your petitioners, as in duty bound, ſhall pray. Signed by 384 citizens.

On the 21ſt January, on motion of Mr. Ewalt, ſeconded by Mr. Laycock, this petition was referred to Mr. Jeſſe Moore, Mr. F. Smith, Mr. Ferguſon, Mr. Boileau and Mr. Penroſe.

On the 25th January, Mr. M'Maſters and Mr. Ewalt preſented ſeveral petitions from 297 inhabitants of Allegheny Beaver and Butler counties, as follows:

*The* HONORABLE HOUSE *of* REPRESENTATIVES *of the Commonwealth of Pennſylvania, in General Aſſembly met.*

The petition of the underwritten inhabitants of Allegheny Beaver and Butler counties,

HUMBLY SHEWETH,

That ſeveral of your petitioners have witneſſed, and the others, have been informed by a general and uncontradicted report, that ALEXANDER ADDISON, preſident of the court of common pleas, in the fifth diſtrict, whilſt ſitting as preſident of the court of Allegheny county, on Monday the 22d December, 1800, and on Monday the 22d June, 1801, and at other times did actually interrupt and prevent J. B. C. Lucas, one of the aſſociate judges of the court of common pleas of Allegheny county from addreſſing the jury of the ſame court, and communicating to them his ideas on the ſubjects and caſes before the court and jury. Your petitioners conceive, that being under the juriſdiction of the ſaid court, they have a right to the ſervices and official aſſiſtance of every judge, ſetting at the ſaid court. That having been deprived of thoſe ſervices in the time and manner above related, they believe the checks and ſecurity intended by the conſtitution of this commonwealth in its judiciray ſyſtem, relative to the court of common pleas and quarter ſeſſions have been impaired; the powers of the ſaid court have been unduly engroſſed; the conſtitutional weight of ſome of the aſſociate judges almoſt annihilated, and under thoſe circumſtances, they find themſelves wreſted of ſome of their deareſt rights. Your petitioners therefore humbly pray your HONORABLE HOUSE, that it may be pleaſed to take into its moſt ſerious conſideration the facts herein ſtated, and act thereon as it may ſeem meet, and they will pray.

Allegheny county, January 1ſt, 1802.

This petition was referred to the ſame committee.

On the 19th February, Mr. Jeſſe Moore, from this committee reported: "That being firmly perſuaded, that the peace and

much of the happineſs of civil ſociety, are neceſſarily connected with the impartial and uninterrupted adminiſtration of juſtice; they have anxiouſly reflected on the difficulty and importance of the ſubjects committed to them; that from ſaid petitions and other documents, it appears to them, that the ſaid ALEXANDER ADDISON, while acting as preſident of the court of common pleas of Alleghény county, did heretofore, at different times interrupt and prevent John B. C. Lucas, an aſſociate judge of the county aforeſaid, from fully and freely exerciſing and diſcharging his oficial duty as ſuch aſſociate; that if the uſurpations aforeſaid, of the ſaid ALEXANDER ADDISON, be quietly acquieſced in by the Legiſlature, there is reaſon to apprehend, that the conſtitutional independence of the aſſociate judges of the courts of common pleas, within the ſaid circuit will be annihilated, and all the utility which the public has a right to expect from their ſervices, prevented or entirely deſtroyed; that it is in vain, that our conſtitution and laws have eſtabliſhed courts, conſiſting of five judges, mutually to aid and counſel, or to act independantly of each other, as the law, their judgments and conſciences ſhould require, if one of them may, whenever actuated by paſſion or caprice, with impunity aſſume to himſelf all the authority to which the whole of them only are competent; and that to ſecure the free uninterrupted and impartial adminiſtration of juſtice within the ſaid circuit, it is neceſſary that the Legiſlature, as far as their authority extends, ſhould endeavour promptly to remedy the evils, and redreſs the grievances exhibited in the petitions and documents aforeſaid. The committee therefore ſubmit the following reſolution, viz."

"*Reſolved*, That a committee be appointed, to prepare and draft an article or articles of impeachment, againſt the ſaid ALEXANDER ADDISON, preſident as aforeſaid, for a miſdemeanor or miſdemeanors in office."

On the 23d February, this report was adopted, and the committee who brought it in ordered to be a committee, for the purpoſes expreſſed in the reſolution.

On the 9th March, Mr. Jeſſe Moore, from the committee appointed to draft the articles of impeachment, reported two articles, which on the 11th were adopted, by a committee of the whole Houſe.

On the 18th March, on the motion of Mr. Laycock, ſeconded by Mr. Ewalt, the articles of impeachment againſt ALEXANDER ADDISON, as reported by the committee of the whole, were read in the Houſe and amended, by ſtriking out the words "*an aſſociate judge*" and inſerting the words "*one of the judges*" in both articles. And on the 19th it was ordered, that the ſaid articles be engroſſed and ſigned by the Speaker; and a committee be ap-

pointed, to exhibit the ſame to the Senate, and to manage the trial thereof. Mr. Boileau, Mr. Jeſſe Moore, Mr. F. Smith, Mr. Mitchel and Mr. R. Porter, were appointed a committee to exhibit the articles, and manage the trial.

On the 25th March, the following letter of Mr. ADDISON, to the Speaker, was read in the Houſe of Repreſentatives:

*Pittſburgh, 19th March,* 1802.

SIR,

I learn from the newſpapers, that a reſolution has paſſed the Houſeof Repreſentatives, for preferring an impeachment againſt me.

Preſuming that the zeal of the Houſe for public juſtice, is perfectly conſiſtent with a diſpoſition, to afford me every proper means of preparation for defence. My anxiety to meet this accuſation as early and fully as poſſible, induces me to requeſt that the clerk of the Houſe be directed to furniſh me with a copy of the petitions, with the names annexed; and of the affidavits or other evidence, on which this reſolution is founded; and a copy of the article or articles of impeachment; and a liſt of the witneſſes by which it is intended to ſupport the impeachment.

For an officer at ſuch a diſtance as I am, to procure the attendance of the witneſſes that may be neceſſary for his defence on an impeachment, might be an intolerable burden. It would be in fact, ſaying that every man who accepts an office, does it at the riſk of being ruined, when any malicious man chooſes to make oath againſt him. And as I am not conſcious of any miſdemeanor in office, nor acquainted with the evidence againſt me, I think myſelf entitled to be preſumed innocent 'till the contrary appear on an open trial, at which I may have an opportunity of being preſent. I therefore beg leave further to requeſt, that the managers of the impeachment may be inſtructed to procure the attendance of ſuch witneſſes, as I may ſatisfy them, are neceſſary for my defence at the expence of the State. This I have the more reaſon to expect, as the State is intereſted for its own honor in the acquital of an officer in my ſtation; if he be really innocent, as I ſincerely think I am, and as I truſt the Houſe will rejoice in being convinced of. I beg further, that information be given me of the names of the managers of the impeachment, and with which of them I ſhall correſpond; and alſo of what order the Houſe may think proper to take on this letter, (which, for this purpoſe I requeſt the favor of you, to

lay before the Houſe as ſoon as poſſible,) and that the papers which I deſire, may be forwarded to me by the firſt proper occaſion or by poſt.

I am Sir, with due reſpect,
your moſt obedient ſervant,
ALEXANDER ADDISON.

The Honorable *Iſaac Weaver*, jun. Eſquire,
Speaker of the Houſe of Repreſentatives.

On the ſecond reading of this letter, Mr. Jeſſe Moore moved and read as follows:

*Reſolved*, That this Houſe, having already preferred articles of impeachment againſt ALEXANDER ADDISON to the Senate, do not apprehend, that at preſent they can properly grant the requeſts in his letter to the Speaker.

Mr. Wayne moved to poſtpone this in order to introduce the following as a ſubſtitute.

*Reſolved*, That the Clerk of the Houſe be directed to make out copies of the reſpective papers and documents requeſted by ALEXANDER ADDISON, and referred to in his letter to the Speaker, and cauſe them to be tranſmitted to him as ſoon as convenient.

This was negatived, only ſixteen Members voting for it.

Mr. Penroſe then moved to amend Mr. Moore's reſolution, by adding to the end thereof the words "*and that a tranſcript of this reſolution together with the letter of Alexander Addiſon to the Speaker of this Houſe, be tranſmitted to the Senate.*" But this was negatived, and Mr. Moore's agreed to, together with a reſolution, moved by Mr. Wayne, that the Clerk tranſmit to ALEXANDER ADDISON, Eſquire, a tranſcript of the reſolution, relative to the order taken upon his letter.

On the 22d March the Clerk of the Houſe of Repreſentatives preſented to the Senate a copy of the reſolution of the Houſe of Repreſentatives, of the 19th March.

On the 23d March, the managers peſented to the Senate the articles of impeachment; which on the 27th March, the Senate re ferred to a committee.

On the 29th March this committee reported to the Senate the following reſolution:

*Reſolved*, That the Senate will meet at the Court-houſe, in the borough of Lancaſter, on the firſt day in September next, and on the following Thurſday commence the trial of ALEXANDER ADDISON, preſident of the courts within the fifth diſtrict of Pennſylvania, on the articles of impeachment,

exhibited againſt him by the Houſe of Repreſentatives, in their name and in the name of the people of Pennſylvania, and that the Speaker be directed to iſſue an order, requiring him the ſaid ALEXANDER ADDISON, to attend on the day laſt aforeſaid, to anſwer the articles of impeachment aforeſaid, and that the ſaid order be ſerved on him, and a copy of the ſaid articles of impeachment be delivered to the ſaid ALEXANDER ADDISON, forty days before the day appointed for trial.

Mr. Rodman then moved that the Senate proceed to the trial on the ſecond Tueſday of December next.

Mr. Gurney moved for the ſecond Tueſday in May.

Mr. Findley moved that the further conſideration of the report be poſtponed, and eſpecially recommended to the conſideration of the next Legiſlature.

Mr. Rodman's propoſition was adopted, and the report altered accordingly.

Mr. Gurney moved that the Speaker be requeſted to furniſh MR. ADDISON with copies of all ſuch papers, which have been adduced to ſubſtantiate the charges againſt him. This was negatived.

Mr. Findley moved that the further conſideration of the report be poſtponed generally. This was negatived.

The report was then adopted, as altered on the motion of Mr. Rodman, fixing the ſecond Tueſday of December as the day of trial.

During the recеſs of the Legiſlature the following proceſs was ſerved on ALEXANDER ADDISON, Eſquire, and returned with the annexed depoſition of the ſerving thereof:

PENNSYLVANIA, ſſ.

*The Commonwealth of Pennſylvania to the Sheriff of Alleghany County*—Greeting:

We command you that you ſummon ALEXANDER ADDISON, late of your county, preſident of the courts of common pleas, in the circuit conſiſting of the counties of Weſtmoreland, Fayette, Waſhington and Allegheny, ſo that he be and appear at the bar of our Senate, in the borough of Lancaſter, on the ſecond Tueſday of December next, to anſwer articles of accuſation and impeachment, for high miſdemeanors in office, exhibited againſt him by our Houſe of Repreſentatives, in their name, and in the name of the people of Pennſylvania; and have you then and there this precept.

Witneſs, John Pearſon, Eſquire, Speaker of our ſaid Senate at Lancaſter, this ſeventh day of April, in the year of our Lord one thouſand, eight hundred and two.

(Atteſt) JOHN PEARSON.

GEO. BRYAN, Clerk of the Senate.

(Endorſed)

ALLEGHENY COUNTY, ſſ.

*Memorandum.* This third day of July, in the year of our Lord one thouſand eight hundred and two, before me, George Wallace, one of the aſſociate judges of the court of common pleas of Allegheny county, perſonally came William Wuſthoff, ſheriff of the ſaid county, who being duly ſworn, depoſeth and ſaith, that on the firſt day of July, between the hours of eight and nine P. M. he had read the within ſummons to ALEXANDER ADDISON within named, and delivered to ſaid ALEXANDER ADDISON, a true copy thereof.

Witneſs, my hand and ſeal, the day and year aforeſaid, So anſwers,

WILLIAM WUSTHOFF, Sheriff.

*Sworn and ſubſcribed before me, the day and year aforeſaid,*

GEORGE WALLACE.

On the 13th of December 1802, a committe was appointed in the Houſe of Repreſentatives, to enquire and report what proceedings the Houſe ought to adopt, relative to the articles of impeachment preferred by the late Houſe of Repreſentatives againſt Alexander Addiſon, Eſquire; they reported on the 15th:

That the committee, to whom was referred, "the extracts from the Journals of the Senate, concerning the impeachment there alledged to be pending againſt Alexander Addiſon, preſident of the ſeveral courts of common pleas, conſiſting of the counties of Weſtmoreland, Fayette, Waſhington and Allegheny, to enquire and report what proceedings this Houſe ought to adopt relative to the ſaid impeachment, and the charges therein contained;" after maturely conſidering thoſe charges and the evidence (ſo far at leaſt as they could obtain it) on which they are grounded, do not apprehend that they are ſuch as the conſtitution requires to be proſecuted by an impeachment. For the conſtitution ordains, that "The Governor, and all other civil officers, under this commonwealth, ſhall be liable to impeachment for any *miſdemeanor in office:* but judgment in ſuch caſes ſhall not extend further than to removal from office, and diſqualification to hold any office of honor, truſt or profit under this commonwealth;" and that "the judges of the ſupreme court, and

of the ſeveral courts of common pleas, ſhall hold their offices during good behavior: but for any *reaſonable cauſe*, which ſhall not *be ſufficient ground* of impeachment, the Governor may remove any of them, on the addreſs of *two thirds* of each branch of the Legiſlature."

Now to define with preciſion thoſe *official miſdemeanors*, contemplated by the conſtitution as ſufficient ground of impeachment, and thoſe "*reaſonable cauſes*" of removal from office, on the addreſs of two thirds of each branch of the Legiſlature, is no eaſy taſk: different perſons, without being juſtly liable to any unfavorable imputation, may really be led to make a different claſſification or arrangement. Had the conſtitution told us by an example in each caſe, what ſhould be ſufficient ground for impeachment, and what ſhould be ſufficient cauſe for removal from office, on the addreſs of two thirds of each branch of the Legiſlature, we ſhould have leſs difficulty in aſcertaining what ſpecies of offences ought to be comprehended within each claſſification. But this has not been done; it could not be eaſily effected, without incurring the danger of excluding from puniſhment hundreds of offences, perhaps more injurious and more neceſſary to be puniſhed than thoſe which might have been mentioned as examples. When, therefore, a civil officer ought to be impeached, and when he ſhould be removed from office, on the addreſs of two thirds of each branch of the Legiſlature, can be known only from a fair conſtruction of the conſtitution as it is written, from judicial deciſions the definitions and deſcriptions of writers on law of acknowledged authority, and from that ſound diſcretion, limited by the conſtitution, and that knowledge which the Legiſlature is ſuppoſed to poſſeſs, of what in general as well as in every particular inſtance, the pure adminiſtration of juſtice and the public good require to be done.

Diſqualification to hold any office of honor, truſt or profit under this commonwealth, is the leaſt puniſhment conſequent on an impeachment, in caſe of a conviction, a puniſhment, that to a generous mind is hardly leſs than death itſelf, and that on account of its ſeverity will probably cauſe many perſons impeached to be acquitted, who certainly would, and ought to be puniſhed by another mode of proſecution. But in a caſe ſuch as that referred to your committee, in which there appears to them ſcarcely room to doubt, *what manner of proceeding* ought to be adopted; prudence, juſtice and humanity, as well as the ſpirit of the conſtitution ſeem to require that, that conſtitutional mode of proceeding ſhould be ſelected which is the mildeſt, and beſt calculated effectually to remedy the evils complained of. Though our immediate predeceſſors, at leaſt as patriotic as we can pretend to be, have thought it their duty in this inſtance to prefer an impeachment, of the pending exiſtence and expediency of which, we

conceive this House have an undoubted and unquestionable right to judge and decide; yet your committee do not apprehend, that this present House of Representatives are bound to prosecute an impeachment, which they do not believe to be authorised and required by the constitution, merely because it hath been preferred by a former House.

But while your committee do not apprehend, that the offences with which the said Alexander Addison stands charged in the said impeachment, are sufficient ground to authorise and require the prosecution thereof by this House, they nevertheless furnish such reasonable cause as ought to induce an immediate enquiry concerning them: Your committee therefore offer the following resolution:

*Resolved*, That the said impeachment is pending before the Senate, against the said Alexander Addison; but that this House, as well for the reasons before assigned as others, ought not to prosecute the same.

On the 17th, the House negatived the report of the committee: and

*Resolved*, That a committee be appointed to manage on the part of this House, the articles of impeachment now pending before the Senate, against Alexander Addison, and that they be empowered to send for persons and papers, and to examine witnesses upon oath or affirmation, and

*Ordered*, That Mr. Ross, Mr. Ferguson, Mr. Pugh, Mr. Simpson and Mr. I. Davis, be a committee for that purpose.

On motion of Mr. Laycock, seconded by Mr. M'Masters,

*Resolved*, That the attorney-general and such other counsel as the committee appointed to manage the articles of impeachment, against Alexander Addison, may think proper, be requested to give their attendance at the trial of the said Alexander Addison, before the Senate of this commonwealth, and assist thereat on behalf of the House of Representatives.

On the 18th December, a letter addressed to the Speaker, signed Alexander Addison, was read as follows, viz.

*Lancaster, 18th December*, 1802.

SIR,

I request that the House will direct the Clerk, to allow me to examine and transcribe such documents in his hands, relative to my impeachment, as I may think necessary for my defence; and that the managers will be instructed to summon at the public ex-

pence, such witnesses in my behalf, as I may satisfy them, are necessary on the trial of the impeachment.

Conscious as I am of innocence, I have a right to claim a presumption of it 'till a trial exhibits me in another light, and if I be innocent, the honor of the State is concerned in my acquittal, nor ought it, in my opinion, to be laid upon me to defend myself, at so great a distance from the place, where the facts happened at an expence, which the profits of the office would not justify me to incur. I owe a duty to the public to explain my official conduct thus solemnly charged, and I am willing to perform it; but I owe also a duty to my own family and private interest.

I am with due respect,
Your most obedient servant,
ALEXANDER ADDISON.

The Honorable *Isaac Weaver*, jun. Esquire,
Speaker of the House of Representatives
of Pennsylvania.

Mr. Evans, seconded by Mr. Welles, moved that it be "*Resolved*, That the request of Alexander Addison, *Esquire*, as contained in his letter of this date to the Speaker be granted.

On the 20th December, this resolution was postponed, and the following adopted: "*Resolved*, That the clerk be directed to furnish Alexander Addison, *Esquire*, with correct copies of all such papers, in the possession of this House, as the said Alexander Addison, may judge necessary to his defence, on the impeachment now pending before the Senate."

## IN THE SENATE.

On Tuesday the 14th December, a letter from Alexander Addison, informing that he is now attending, in pursuance of the summons served on him, to appear and answer certain articles of impeachment, was read. It was moved, that the members of the Senate be sworn or affirmed, in order to proceed to the trial of the impeachment: but on motion "*Resolved*, That the trial be postponed 'till to morrow.

On 21st December, the following letter was read:

*Lancaster, 20th December*, 1802.

SIR,

To the articles of impeachment against me, I am ready to plead.

At the last session of the Assembly, I applied to the House of Representatives, (as soon as a I learned an impeachment was

determined on) for certain things to be done in this behalf. Theſe were then refuſed. I ſent a copy of the ſame letter to the Senate, as I underſtood from a private letter, and afterwards from the minutes, that the refuſal was on the ground, that the impeachment be preferred to the Senate; the Houſe of Repreſentatives could not properly grant the requeſt. Before my letter to you, could reach Lancaſter, I preſume the Aſſembly had broke up, and I know not whether you got it. After the Houſe of Repreſentatives had in their ſeſſion, determined to proſecute the impeachment and appointed managers, I applied to that Houſe for copies of the documents, and inſtructions to their managers, to ſummon at the public expence ſuch witneſſes, as I ſhould ſatisfy them were neceſſary for my defence. They have ordered the documents to be given, but refuſed the inſtructions; and in the argument for refuſing, one of the members ſtated, that the Senate was the proper place to apply to. It was ſtated that I wanted only four witneſſes. I beg leave to expreſs again my opinion that this is a caſe different from common proſecutions, where the facts are to be tried in the county: different from all the impeachments hitherto in Pennſylvania; when the Legiſlature ſat where the parties lived: different too, in another reſpect, that there is no charge of corruption or diſhoneſty—none conveying any ſtain of infamy. For an officer at a diſtance from the Legiſlature, at which I am to bring down witneſſes, at his own expence, would be telling every ſuch man, when you accept of an office, you do it at the riſk of ruin if ever an accuſation is made againſt you. The burden would to me be intolerable.

The Senate who are to try the impeachment, would no doubt wiſh to have their conſciences well informed; and if the Houſe of Repreſentatives may expend the public money, in paying counſel to ſupport the accuſation, may not the Senate do ſo, in an endeavour to clear the character of an officer, when the honor of the State is concerned in ſhewing the purity of officers who are innocent, as much as in puniſhing them as guilty.

I beg leave to requeſt, that the Senate will order ſubpœnas to iſſue, to require the attendance of witneſſes in my behalf at the public expence; I ſhall deſire the attendance of four only, and will ſatisfy the Senate that their teſtimony is neceſſary, if the Senate require this in the caſe of ſo few.

With due reſpect, I am
Your moſt obedient ſervant,
ALEXANDER ADDISON.

Honorable *Speaker* of Senate.

This letter was referred to a committee, which on the 22d made a report, which was amended and adopted by the Senate as follows, to wit:

*Resolved*, That the Senate will sit in their judicial capacity on the third Monday of January next, for the purpose of hearing and determining on articles of accusation and impeachment, exhibited by the House of Representatives against Alexander Addison, and that the Speaker be, and he is hereby directed to issue process on the application of the managers on the part of the House of Representatives, or of Alexander Addison, to require the attendance of such witnesses as either of the said parties shall judge necessary.

It being resolved, that Alexander Addison be now called and admitted to plead to the charges, exhibited against him by the House of Representatives; and that the House of Representatives be informed thereof; and that Alexander Addison has notified the Senate of his readiness to appear. The managers were introduced; and Alexander Addison came, and the articles of impeachment were read to him as follows:

*Articles of accusation and impeachment against Alexander Addison, president of the courts of common pleas, in the circuit consisting of the counties of Westmoreland, Fayette, Washington and Allegheny, preferred by the House of Representatives of the commonwealth of Pennsylvania, in their name and in the name of the people of Pennsylvania, and exhibited to the Senate of the said commonwealth.*

Article 1. That the said Alexander Addison, being duly appointed and commissioned president of the several courts of common pleas, in the circuit consisting of the said counties of Westmoreland, Fayette, Washington and Allegheny, within the territory of the said commonwealth, while acting as president of the court of common pleas of the said county of Allegheny, on Saturday the twenty-eighth day of March, in the year of our Lord, one thousand eight hundred and one, in open court of common pleas, then and there holden, in and for the county last aforesaid; did after John Lucas, otherwise John B. C. Lucas, also duly appointed and commissioned one of the judges of the court of common pleas, of the county last aforesaid, had in his official character and capacity of judge as aforesaid, and as of right he might do, addressed a petit jury, then and there duly impanneled and sworn or affirmed respectively as jurors, in a cause then pending, then and there openly declare and say to the said jury, "that the address delivered to them, by the said John Lucas, otherwise John B. C. Lucas, had nothing to do with the question before them, and that they ought not to pay any attention to it,"

thereby degrading, or endeavoring to degrade and villify the ſaid John Lucas, otherwiſe John B. C. Lucas, and his character and office as aforeſaid, to the obſtruction of the free, impartial and due adminiſtration of juſtice, and contrary to the public rights and intereſts of this commonwealth,

ART. 2. That the ſaid Alexander Addiſon, being duly appointed and commiſſioned preſident as aforeſaid, did at a court of quarter ſeſſions of the peace, and court of common pleas, holden in and for the county of Allegheny aforeſaid, on Monday the twenty-ſecond day of June, in the year of our Lord one thouſand eight hundred and one, under the pretence of diſcharging and performing his official duties of preſident as aforeſaid, unjuſtly, illegally and unconſtitutionally, claim, uſurp and exerciſe authority not given or delegated to him by the conſtitution and laws of this commonwealth, inaſmuch as he the ſaid Alexander Addiſon, preſident as aforeſaid, did under pretence as aforeſaid of diſcharging and performing his ſaid official duties, then and there in time of open court, unjuſtly, illegally and unconſtitutionally, ſtop, threaten and prevent the ſaid John Lucas, otherwiſe John B. C. Lucas, alſo duly appointed and commiſſioned one of the judges of the ſaid courts, from addreſſing, as of right he might do, a grand jury of the ſaid county of Allegheny, then and there aſſembled and impannelled and ſworn or affirmed reſpectively, concerning their rights and duties as grand jurymen, thereby abuſing and attempting to degrade the high offices of preſident and judge as aforeſaid, to the denial and prevention of public right, and of the due adminiſtration of juſtice, and to the evil example of all others in the like caſe offending.

And the ſaid Houſe of Repreſentatives by proteſtation ſaving to themſelves the liberty of exhibiting at any time hereafter any other accuſation or impeachment againſt the ſaid Alexander Addiſon, preſident as aforeſaid, and alſo of replying to the anſwers which he the ſaid Alexander Addiſon, preſident as aforeſaid, ſhall make unto the ſaid articles or to any or either of them, and of offering proof of the ſaid premiſes or of any of them, or of any other accuſation or impeachment which ſhall or may be exhibited by them as the caſe ſhall require, do demand that the ſaid Alexander Addiſon, preſident as aforeſaid, may be put to anſwer all and every of the premiſes, and that ſuch proceedings, examination, trial and judgment may be againſt and upon him had, as are agreeable to the conſtitution and laws of this commonwealth, and the ſaid Houſe of

Repreſentatives are ready to offer proof of the premiſes at ſuch time as the Senate of the ſaid commonwealth of Pennſylvania ſhall appoint.

ISAAC WEAVER, jun. *Speaker of the Houſe of Repreſentatives.*

The Speaker then addreſſed Alexander Addiſon as follows:

ALEXANDER ADDISON, Esq.

You have heard the charges exhibited againſt you by the Houſe of Repreſentatives, and now depending before the Senate, read.

*Are you guilty, or not guilty?*

Alexander Addiſon roſe, and addreſſed the Speaker as follows, to wit:

*Mr. Speaker,*

I wiſh to know whether I am to plead to the articles of impeachment ſeparately or generally.

The Speaker replied, I am inſtructed to ſay, you are to plead generally.

Alexander Addiſon, again roſe and ſaid,

I am not guilty in manner and form as I am therein charged.

The managers made a verbal requeſt, that the Senate would, for reaſons offered, reconſider the reſolution fixing the time of proceeding to the trial of Alexander Addiſon, and that the fourth Monday of January next, may be fixed on for the day of trial.

When it was moved by Mr. Steele, ſeconded by Mr. Hartzel,

That the Senate do now reconſider the reſolution, fixing the time of trial of the articles of accuſation and impeachment exhibited againſt Alexander Addiſon, by the Houſe of Repreſentatives, and now depending before the Senate.

The yeas and nays on the queſtion, were called for by Mr. Jones, ſeconded by Mr. Johnſton, and the queſtion being put, the Members voted as follows, to wit:

| YEAS. | NAYS. |
|---|---|
| Mr. Gamble, | Mr. Barton, |
| Mr. Hartzell, | Mr. Ewing, |
| Mr. Heiſter, | Mr. Findley, |
| Mr. Lower, | Mr. Harris, |
| Mr. Lyle, | Mr. Johnſton, |
| Mr. M'Arthur, | Mr. Jones, |

| YEAS. | NAYS. |
|---|---|
| Mr. Mewhorter. | Mr. Kean, |
| Mr. Morton, | Mr. Lane, |
| Mr. Richards, | Mr. Pearſon, |
| Mr. Steele, | Mr. Porter, |
| Mr. Whitehill, 11 | Mr. Reed, |
| | Mr. Maclay, *Speaker*. 12 |

So it appeared that there were eleven yeas and twelve nays, and that this motion was determined in the negative."

In the Houſe of Repreſentatives on the 1ſt January, 1803, the managers having reported the plea of ALEXANDER ADDISON, *Eſquire*, the following reſolution was adopted: "That the following replication be made to the plea or anſwer of the ſaid ALEXANDER ADDISON, *Eſquire*, to wit:

"The Houſe of Repreſentatives of the commonwealth of Pennſylvania, proſecutors on behalf of themſelves and the people of Pennſylvania, againſt ALEXANDER ADDISON, preſident of the ſeveral courts of common pleas in the circuit conſiſting of the counties of Weſtmoreland, Fayette, Waſhington and Allegheny, the territory of the ſaid commonwealth, reply to the anſwer of the ſaid ALEXANDER ADDISON, and aver that the charges againſt the ſaid ALEXANDER ADDISON are true, and that the ſaid ALEXANDER ADDISON is guilty of all and every the matters contained in the articles of accuſation and impeachment, by the late Houſe of Repreſentatives, exhibited againſt him, in manner and form, as they are therein charged, and this the preſent Houſe of Repreſentatives are ready to prove againſt him, at ſuch convenient time and place as the Senate ſhall appoint for that purpoſe."

And on the 17th January the Houſe of Repreſentatives would in committee of the whole, attend in the Senate chamber during the trial of the impeachment.

In the Senate on the 13th January, 1803, a committee was appointed to report a form of an oath or affirmation to be taken by the Senators when ſitting in their judicial capacity on the trial of Alexander Addiſon. On the 14th this committee reported the following form of an oath:

"I do ſwear (or affirm) that I will, well and truly, try the facts ſtated in the articles of accuſation and impeachment, exhibited to the Senate, by the Houſe of Repreſentatives, againſt Alexander Addiſon, or which may be further exhibited againſt him, and a true judgment give according to the evidence."

This was adopted. But on the 15th January, on motion to reconſider, the form of the oath was altered and adopted as follows:

"I do ſwear (or affirm) that I will, well and truly try, and a true judgment give according to law and evidence, between the commonwealth of Pennſylvania and Alexander Addiſon, upon the articles of accuſation and impeachment, exhibited againſt him, and now depending before the Senate."

On January 17th, the Senate reſolved, for accommodation of the citizens, to meet in their judicial capacity on the trial of Alexander Addiſon in the chamber of the Houſe of Repreſentatives, if that Houſe ſhould think proper to offer the uſe thereof for that purpoſe. This the Houſe of Repreſentatives did.

A letter from Alexander Addiſon, *Eſquire*, was read, after which the Senate left their chamber.

# The Trial.

THE Senate having aſſembled in the chamber of the Houſe of Repreſentatives in conſequence of a requeſt of the Houſe, as the moſt commodious room to accommodate both houſes, and the citizens who appeared generally deſirous of attending the proceedings on the impeachment.

On calling over the names of the Senators, the following gentlemen anſwered to their names, viz.

| | |
|---|---|
| Mathias Barton, | Aaron Lyle, |
| James Ewing, | William M'Arthur, |
| William Findley, | Thomas Mewhorter, |
| James Gamble, | Thomas Morton, |
| James Harris, | John Pearſon, |
| Jonas Hartzell, | John Porter, |
| John Heiſter, | William Reed, |
| Thomas Johnſton, | John Richards, |
| John Jones, | William Rodman, |
| John Kean, | John Steele, |
| Preſly Carr Lane, | Robert Whitehill, |
| Chriſtian Lower, | Samuel Maclay, *Speaker.* |

Mr. Samuel Maclay, Speaker of Senate, called the attention of the Members of that body, to a letter juſt received from Alexander Addiſon, addreſſed to him as Speaker of the Senate. He directed Mr. George Bryan, clerk of the Senate to read the ſame; it was as follows:

*Lancaſter, January 17th,* 1803.

SIR,

I beg leave to ſtate to the Senate, that I am informed there are now in the Senate certain members, who were members of the Houſe of Repreſentatives, when that Houſe reſolved to proſecute the impeachment againſt me, and that they voted on that queſtion.

The analogy of all our proceedings, and a due regard to a pure and impartial adminiſtration of juſtice, requires that parties ſhould come forward to the proper tribunal, with a juſt confidence, that none of the judges have previouſly exerciſed their judgement on the queſtion. If this were not the caſe, the parties would ſtand in a very aukward ſituation, when they could point out ſome of their judges who had previouſly determined againſt them.

In the caſe of a trial at law in the ordinary courts, no grand juror would be permitted to ſit as a traverſe juror on the ſame indictment.

In the Britiſh parliament—If any member of the houſe of commons, who had voted on an impeachment, were before the trial made a peer, I humbly preſume he would withdraw from the trial.

I have no concern in this caſe, but that a due regard to the adminiſtration of juſtice be had, and therefore reſpectfully ſubmit this to the Senate, and the individual members.

I am with due reſpect,
Your moſt obedient ſervant,

ALEXANDER ADDISON.

Honorable *Samuel Maclay*, Eſquire,
Speaker of the Senate.

MR. MACLAY, *Speaker.*

Shall Mr. Addiſon be heard in ſupport of the ſentiments expreſſed in that letter?

MR. WHITEHILL.

I do not wiſh to prevent the gentleman from being heard, when it is reaſonable that he ſhould be heard, therefore if it is his requeſt to be heard on this ſubject, I for one, ſhall be in favor of granting him the liberty; and if a queſtion is taken, I ſhall certainly vote for it.

MR. MACLAY, *Speaker.*

If it be the wiſh of Mr. Addiſon, there ought to be a motion made for leave, on which the queſtion may by put.

MR. WHITEHILL.

I therefore move, that Mr. Addiſon be heard in ſupport of his letter to the Speaker.

The Senate agreed to the motion.

MR. ADDISON.

*Mr. Speaker.*

I imagine from what was ſaid by ſome of the members, in the Senate Chamber before they came down ſtairs, that the intention of my ſtatement was miſtaken—It ſeemed to be underſtood as a perſonal objection to the members alluded, but that was not my view. The only thing I had in view was this:—that in my caſe no precedent for future proſecutions ſhall be ſet, that I think improper, without ſtating that it has my cenſure. I would not be miſunderſtood—I do not ſtate my objection to the gentlemen, who may be in the ſituation I have alluded to, from perſonal

motives. No Sir, I addreſs it to the Senate in general, who are the proper guardians of their own honor, and protectors of their own proceedings, and to the individual Members only, as the judges of their own feelings.

Whether the Senate direct them to withdraw or remain, or whether they withdraw of their own accord, muſt be ſubmitted as I ſaid before, to the Senate and themſelves.

MR. STEELE.

The reaſon that I made any remark on the ſubject of this letter when it was firſt read up ſtairs, aroſe from a ſuſpicion, that from the very circumſtance of the addreſs at this time there was an implied objection in it, on the part of the defendant, to my ſitting on this trial, as I was a Member of the late Houſe of Repreſentatives which preſented the impeachment. In order to try the ſenſe of the Senate, and from a wiſh not to create in the mind of an individual, an uneaſineſs that may cripple his defence on his trial, I aſk permiſſion to withdraw myſelf from the Senate 'till the trial is finiſhed.

MR. GAMBLE,

Seconded the motion.

MR. KEAN.

I hope the Member will not obtain leave to withdraw. Look Sir, at the effect ſuch a precedent would produce in all future proceedings on impeachment. The conſtitution requires annually a new election for one fourth of the Members of the Senate, and further that two thirds muſt agree to convict on impeachment; if then by death or reſignation one third of this body had been elected this year from the Members of the other Houſe of laſt year, it would be impoſſible to proceed, and thereby the public juſtice required at our hands, would be totally defeated. I do not underſtand the reaſon why he wiſhes to withdraw; it is true he was a Member of the Houſe which framed the impeachment; but he was not a Member of the Senate at that time, and the Senate then decided that the preſent Senate ſhould try the cauſe; the conſtitution muſt be obeyed; in its language it is imperative "the Senate *ſhall* try." If the Gentlemans excuſe is a reſpect for his own feelings, I ſay that every gentleman preſent would be glad if his attendance could conſtitutionally and honorably be diſpenſed with on ſuch unpleaſant occaſions; few men are inclined to ſit on trials of this kind; but when they find it their duty, they muſt conform. I hope therefore the Senate will not permit the Member to withdraw.

MR. FINDLEY.

I ſhould be glad to know if there are any precedents, which

would apply to this case. I do not know whether the chairman of a grand jury, who had signed a bill of indictment against a criminal at one term, which was not tried, could not set as a traverse juryman upon the trial at the next term, if a fresh presentation was made. I do not know what is the case of the peers in in England, whether, if they had been members of the house of commons, which had preferred an impeachment to the lords, such peers were excluded by the house or excluded themselves, upon the trial. I should be glad to hear what the precedents are on this subject; not that I mean to say, precedents ought to govern us, but surely they would throw some additional light upon the mode of proceeding.

MR. WHITEHILL.

I observe that the managers on the part of the House of Representatives are prepared with counsel, gentlemen learned in the law, I should therefore be glad to hear from them, what can be said on this point. It is a new case, and most of the members would be glad to hear their opinion before we determine the question. Suppose the gentlemen who are in a similar situation with the member from Lancaster, are all permitted to withdraw, the precedent may be attended with the most unhappy consequences; no person hereafter could be impeached one year and tried the next, because there would be a great change in the Senate, so as to defeat the object. A due consideration at this time, may prevent the establishment of a precedent, which may prove injurious hereafter. Let us therefore hear the counsel, that when we have heard them, we may come to a conclusion, which we hope, may be a happy one for the State, as well, as for the gentleman to be tried.

MR. MACLAY, *Speaker.*

Certainly if the managers on the part of the House of Representatives are desirous of being heard by counsel, there can be no doubt but the Senate will indulge them.

MR. FERGUSON.

As one of the maaagers on the part of the House of Representatives, I have to inform the Senate, counsel is employed on their behalf, and are at present ready to assist them on the present occasion.

MR. DALLAS.

*Mr. Speaker, and*
*Gentlemen of the Senate,*

THE task I have undertaken in consequence of the request of the managers of this impeachment on the part of the House of Representatives is a weighty one; but the im-

portance of the occaſion ought to acquit me from the ſuſpicion of engaging in it from motives of hoſtility to the defendant. I have no wiſh but that the trial may be carried on with every delicacy to the feelings of the Gentleman who is its object; and on the part of the managers I can ſay ſuch a mode would harmonize with their feelings. I am perfectly aware of the correct diſpoſition of the Houſe as to this point, all however are limited in the wiſh, that the trial ſhall be ſatisfactory and fair. Whatever may be the deciſion of the Senate on the final queſtion, or the effect upon the Gentleman, who is the object of accuſation, we ſhall acquieſe with pleaſure. We think the individual Members are ſuperior to any bias whatever. If they decide from an indulgence to the feelings of the Gentlemen, who did properly give their opinion on this impeachment laſt year in the Houſe of Repreſentatives, that they ſhall be excuſed from being ſworn on the trial, we ſhall be juſtified, becauſe we believe that the ultimate deciſion, whether made by a greater or leſſer number of this body, will comport with law and juſtice. Under theſe impreſſions, I ſhould have remained ſilent, becauſe the deciſion either way, would have been ſatisfactory to the managers and their counſel; but as the Members of the Senate have expreſſed a wiſh to hear our general ideas on this point, I will detail them without any anxiety as to the iſſue.

The grounds in general of the common law, are that any perſon who has paſſed his opinion under oath on the point in controverſy, is precluded from ſitting in judgment in the caſe; I believe alſo, that where a perſon has volunteered his opinion, and decided on a cauſe, tho' not on oath, it would be ground of challenge. It is only juſtice to Mr. Addiſon's claim to make this conceſſion. But here are grounds to diſtinguiſh this caſe. It will be recollected, that in the ordinary tribunals of juſtice, the grand jurors, the petit jurors and the judges are all conſtituent members of the court, that they all muſt concur in the reſult of guilty or not, and all are bound by a ſpecial oath to diſcharge their duties reſpectively, as they are aſſigned to them. This is not the caſe on impeachment; the Houſe of Repreſentatives are not called upon under an oath peculiar to the impeachment, but make the preſentation to the Senate merely as a part of their legiſlative duty. Certain facts are communicated to them, and they are examined without taking an oath of office; if they conclude that the perſon complained of, has miſdemeaned himſelf in his office, they accuſe him.—Here is the leading diſtinction. In the caſe of a grand juryman, he is called upon to examine and preſent under the obligati-

on of an oath, pointed to that particular ſubject; the Houſe acts merely in its legiſlative capacity, and performs a conſtitutional injunction in preferring the ſubject to the Senate.

The remarks of the Member from Dauphin, (Mr. Kean) muſt have ſtruck the minds of gentlemen very forcibly; the inconveniencies he ſuggeſted are obvious; and the idea, if purſued in the abſtract, and its conſequences, will prove to our minds, that the principle contended for by the defendant, would defeat the object of impeachment altogether. If then there is no precedent, and the reſult would be ſo abſurd, we ought to reject ſuch an opinion.

It may happen as our elections are annual, and one fourth of the Members of the Senate go out every year; that in a period of four years every Member of the Senate may have been a Member of the Houſe of Repreſentatives, that preferred an impeachment; we know alſo from the hiſtory of foreign countries, our own State and of the United States, that proſecutions may be protracted for three or four years, and often are unavoidably protracted for that time; ſhould this impeachment fall into that predicament, I do not heſitate to ſay upon the principle contended for, that the public juſtice would be altogether defeated; we muſt not therefore, give a conſtruction that would produce ſo ruinous an effect.

Mr. Addiſon ſuggeſts, that the peers in England would not ſit upon trials which had been inſtituted whilſt they had been Members of the Commons. It is likely that he is miſtaken in the caſe. The celebrated and recent trial of Warren Haſtings, laſted ſeven years; during that period no doubt many peers were created; ſuch has been the policy of the miniſter to increaſe his patronage, and no doubt but many of them were Members of the Houſe which exhibited the charge againſt Mr. Haſtings; many other Members of the Commons became peers by deſcent during the ſame period, and tho' I am not prepared to aſſert, that thoſe peers did actually vote on the deciſion of the trial, yet I think it preſumable, that they did from the number and from the mode adopted by that body, by calling over the name of each peer from the liſt who is individually bound to give his verdict in his place, and from the well known conſequence of that trial on acquital, however the defendant has not ſhewn us any difference in that Houſe as a precedent for the Senate.

If theſe general ideas can furniſh information to the minds of the Members, I ſhall feel myſelf happy in having detailed them;

but my wish is, they would exercise their own judgment. I look upon the present question as deciding the principle and precedent, without any regard to the effect it may have in Mr. Addison's case, who I believe has brought the objection forward, not from a desire to cavil or be litigious, but to settle a question he thinks important.

*Mr. Addison.*—So far from being disposed to shew an example of litigiousness, I shall wave the right of replying particularly to the arguments of the counsel. I beg again to assure the Senate and the Members alluded to, particularly, that it was not from any personal motives I made the objection. I will not make a particular answer to the comparison, which has been made between grand and petit juries and the House of Representatives and the Senate; but I say generally that the analogy holds in all its points, and whether they are on a particular oath or not, the Members of the House are bound by the strongest ties of duty and of conscience, to find an impeachment on proper grounds, as a grand jury is bound to find an indictment; I say the analogy is complete, and where there is not proper ground of impeachment or indictment, neither body are bound to do either.

With respect to the case of Warren Hastings, I am not informed, neither is the counsel; he says, that during the seven years it was depending, many peers may have been created, and some became peers by descent, it is true; but can he tell us, whether these new peers voted on the impeachment in the House of Lords, and whether they were Members of the Commons and voted in that House in favor of preferring the impeachment. No Sir, he cannot; and that is the point in question here. I presume they did withdraw because I conceive it consistent with the municipal law and natural justice, that when men are to decide upon an offence, they ought to come forward for the first time, and not have pledged themselves by a previous decision. I am not disposed to cavil or be litigious; I merely made the statement that the Senate might look to their own honor, and the Members to their own individual feelings.

The question was now taken, "*shall Mr. Steele have leave to withdraw?*"

The floor of the chamber was so filled by the Senate, by the Members of the House of Representatives, and a numerous body of citizens, that the vote could not be taken the usual way, viz. by the Members severally rising in the affirmative and negative, as they were inclined to vote; therefore the clerk

was directed to call over the names of the Members of the Senate.

Mr. GAMBLE,

Who was in the like ſituation with Mr. Steele, voted in favor of the motion,

Mr. LYLE,

Whoſe ſituation was ſimilar, wiſhed to be excuſed from voting on the queſtion, and he was excuſed nem. con.

The queſtion was determined in the negative, yeas 6, nays 17.

The following oath or affirmation was then adminiſtered to each Senator who had anſwered to his name, by Andrew Graff, Eſq. aſſociate judge of the common pleas, for Lancaſter county.

I do ſwear, (or ſolemnly, ſincerely, and truly declare, and affirm) that I will, to the beſt of my ability, well and truly try and a true judgment give, agreeably to the conſtitution and laws, and the evidence, between the commonwealth of Pennſylvania and Alexander Addiſon, on the articles of accuſation and impeachment exhibited by the Houſe of Repreſentatives, of the ſaid commonwealth, againſt him, and pending before the Senate.

*Mr. Maclay*, Speaker.—Are the managers now prepared to proceed in the proſecution of this impeachment?

Mr. FERGUSON.

I am inſtructed to ſay, that the managers are prepared.

Mr. George Bryan, Clerk of the Senate, was hereupon directed by the Speaker to read the articles of proſecution and impeachment. for which ſee pages 16, 17 and 18.

*Mr. M'Kean*, requeſted that the plea of the defendant and replication on the part of the managers might be read; which being done,

*Mr. M'Kean——Mr. Speaker, and Gentlemen of the Senate,*

Having been unexpectedly called upon by the managers of this proſecution, on the part of themſelves and of the Houſe, and the chairman of the committee being prevented by an accident from attending at this time. I ſhall proceed to open the evidence in his abſence, not perhaps with ſo much accuracy as I might have done, had I had the the advantage of his aſſiſtance. I ſhall however endeavor to ſtate the charges as they are in ſubſtance as briefly as I can, and then apply the evidence minutely to ſupport them reſpectively.

(The charges were here ſtated; but to avoid a repitition, the editor refers to pages 16 and 18, where they are at length.)

The evidence which will be adduced, will prove, I have no doubt, to the ſatisfaction of the Senate, the truth of the charge nearly in the words as laid in the articles of impeachment, and that the manner of Mr. Addiſon's conduct on the occaſion, mentioned in the firſt charge, was calculated to leſſen the reſpect due to an aſſociate judge of that court, and to render his opinion both then and thereafter of little or no avail.

In ſupport of the ſecond charge, it will appear in evidence, that on the 22d of June, 1801, a court of common pleas was held in and for the county of Allegheny; that Mr. Addiſon ſat there as preſiding judge, and in the morning of that day, Mr. Lucas was the only aſſociate on the bench. After judge Addiſon had delivered his charge to the grand jury, Mr. Lucas not being ſatisfied on this head, wiſhed to deliver his opinion on ſome matter, not adverted to by Mr. Addiſon. Mr. Lucas aroſe to addreſs the grand jury; that when he aroſe, Mr. Addiſon took hold of his arm and deſired Mr. Lucas to communicate to him the ſubject he wanted to deliver to the jury. Mr. Lucas told him, that he did not conſider it neceſſary, and then made another attempt to addreſs the grand jury, and inſiſted on his right to deliver his charge. Mr. Addiſon deſired him to deſiſt and poſtpone the matter until a conſtable was ſworn to attend the grand jury. Mr. Lucas refuſed and ſaid, now is the proper time to deliver my charge, and again made the attempt, and was again interrupted by the preſident, as he had been in every attempt heretofore made. At length a conſtable was ſelected to attend the grand jury, and even after this, Mr. Lucas attempted to addreſs the jury, but was ſtill oppoſed by judge Addiſon, who inſiſted on knowing what he intended to ſay. Mr. Lucas then to avoid further contention, offered Mr. Addiſon the contents of the charge he had in his hand; but this Mr. Addiſon would neither accept or read, when preſented. Mr. Lucas once more attempted to addreſs the grand jury, when Mr. Addiſon told Mr. Lucas that they ought to adjourn, and to the jury he ſaid, they might ſtay or go, as they pleaſed; he hereafter ſaid, he would adjourn the court, and then declared aloud, that ſo far as depended upon him the court was adjourned. After leaving the court, he turned and repeated, that the court might conſider itſelf adjourned 'till 3 o'clock in the afternoon. It will be ſhewn, that at that time, there were only two judges on the bench, and the conſent of both in ſuch a caſe was neceſſary to the adjournment. The gentlemen

of the bar and the jury hereupon retired, and Mr. Lucas was obliged of courſe to leave the bench.

In the afternoon of the ſame day, when the court met, it conſiſted at firſt of the preſident and the aſſociate judge Lucas. Mr. Lucas told the preſident, that he ſtill perſiſted in his right to addreſs the grand jury, and wiſhed to ſend for judge M'Dowell. Mr. Addiſon replied, that he had juſt ſent for Mr. M'Dowell; judge M'Dowell came in a few minutes after, and judge Lucas related to him what had paſſed in the morning, and told him his determination to addreſs the jury. Mr. MDowell anſwered, that he was not prepared to give a deciſion, and wiſhed a poſtponement of the ſubject 'till another time, when there might be a fuller court. Mr. Lucas would not agree to the poſtponement, ſaying that he had a right to deliver his opinion to the grand jury, and that he thought the preſent time the proper time. The grand jury being collected in their box, Mr. Lucas addreſſed them, and began to read, whereupon the preſident called out: Silence ſir, ſtop ſir. Mr. Lucas ſtopped for a moment, and began again. Mr. Addiſon then ſaid: I took upon me to ſtop you on one occaſion at my own riſk, and am anſwerable for the conſequences, and if you do not now deſiſt, we will take means to make you; that this threat induced Mr. Lucas to conclude, that it was the judge's intention to commit him to priſon; it ſeemed incapable of any other conſtruction. Mr. Lucas being thus prevented from delivering his opinion to the jury, and having perſiſted in his claim of right 'till the laſt moment, he was compelled to retire, and did retire from the bench.

If this ſecond charge ſhould be proved, as I am convinced it will be, the defendant has been guilty of a high miſdemeanor in office, and ought to ſuffer the conſequences. The firſt charge perhaps might not of itſelf amount to ſuch an high offence, if it ſtood alone; But as connected with the ſecond, it is of great weight and importance, and ſhews in the preſident a diſpoſition to tyrannize over and oppreſs his brethren on the bench; and it muſt be inferred from the circumſtances, the manner and general conduct, that there was in the mind of the preſident a deſperate and determined hoſtility to his aſſociate, and that on every occaſion he carried it into execution upon this arbitrary conduct and perſecution; we ſay upon the general principle that all oppreſſions in office are crimes of a public nature; oppreſſive and tyrannical conduct in judges is conſidered as of deep malignity.

Offences under colour of office, eſpecially, committed in offices of ſuch high truſt, have always been conſidered as the moſt proper, and of courſe the uſual ground of impeachment. They are ſuch as the ordinary magiſtrates cannot or dare not puniſh, or if they could, probably they would not. It often happens that officers may and do abuſe their power, to the injury of the commonwealth, and at the ſame time in ſuch a manner as not to render their conduct cognizable before the ordinary tribunals of juſtice, ſo as to procred by indictment or information.

An attempt to ſubvert the fundamental laws of a court of juſtice is a fit ſubject of impeachment. So in this caſe Mr. Addiſon reſtraining his aſſociate judge from the exerciſe of his legal right, and endeavoring to eſtabliſh arbitrary power, in himſelf has committed a high miſdemeanor in office, and has attempted to ſubvert the fundamental laws of the country, and acted greatly contrary to the duties of his office.

We ſhall ſhew after the evidence is cloſed what are the conſtitutional powers of this court, and that Mr. Addiſon, as preſident, is not, as was ſaid on that occaſion, the ſole organ of the court. We ſhall ſhew that he does not poſſeſs the excluſive right to charge the grand jury. If from ignorance or other motives, he miſtakes or miſtates the law, it is not only the right, but it is the bounden duty of the aſſociates to diſſent from and correct him. Such aſſociates are bound not only to expreſs their ſentiments, but they ought to give the reaſons of their opinion, that the jury may judge which is right. We ſhall contend that if the preſident aſſumes the power of preventing his aſſociate, as Mr. Addiſon did on this occaſion, that it is a violation of public law, an uſurpation of power, an abuſe of authority, and a high miſdemeanor in office. We ſhall now produce teſtimony in ſupport of the charges as they are laid.

But, firſt, will it be admitted that Mr. Addiſon is duly commiſſioned preſident of the court of common pleas, and Mr. Lucas an aſſociate judge?

Mr. *Addiſon.* I admit all thoſe things, Sir.

*John B. C. Lucas* was called and ſworn.

*Mr. Dallas.* Did you attend the court of common pleas for the county of Allegheny on the 28th March 1801?

*Mr. Lucas.* I did.

*Mr. Dallas.* Was there an action tried at that time in which you gave an opinion to the jury, and what was the nature of that action?

*Mr. Lucas.* There was an action tried in which I gave an opinion to the jury, and so far as I can recollect it was an action of damage brought by Jonathan Coulter against James Moore for defamation.

*Mr. Dallas.* Did Mr. Addison preside at that time?

*Mr. Lucas.* Yes Sir.

*Mr. Dallas.* Did he deliver a charge to the jury in that case?

*Mr. Lucas.* Yes Sir.

*Mr. Dallas.* Did he wish the jury to give exemplary damages?

*Mr. Lucas.* I do not recollect that he used the term exemplary, but I understood the drift of his charge to be in favor of exemplary damages.

*Mr. Dallas.* Did you differ with him in opinion on that point?

*Mr. Lucas.* I cannot say that I expressed an opinion different from Mr. A. but I thought from what had been said by him the jury might be inclined to find heavy damages; and as he was not explicit on that point, neither was I explicit. I thought also that Mr. Addison had with uncommon industry attended to the plaintiff's side of the question, and had omitted to state some things which were given in evidence, that went in mitigation of damages. On this I deemed it proper to make some observations that might have a tendency to counteract the idea of exemplary damages.

*Mr. Dallas.* By this I understood Mr. Addison was in favor of high damages, and you Sir in favor of low damages.

*Mr. Lucas.* I said that he had omitted in his charge to the jury to state the circumstances which went in extenuation, and that therefore I was obliged to make some observations in mitigation.

*Mr. Dallas.* What passed after you had delivered your remarks to the jury?

*Mr. Lucas.* After I had spoken Mr. Addison addressed the jury again, and said all this judge has said may be true, but it has nothing to do with the question now before you, and you ought not to pay any attention to it. You observe that this judge and I differ in opinion, and it is probable that we shall often differ.

*Mr. Dallas.* Was it delivered in a paſſionate manner, or in ridicule or contempt?

*Mr. Lucas.* I did not conſider it as delivered in a paſſionate manner, nor in a ludicrous way; but I conſidered it rather bordering on contempt, real or affected.

*Mr. Dallas.* It affected your mind as a contemptuous or inſulting obſervation?

*Mr. Lucas.* The words were ſpoken in a way that ſhewed he wiſhed it to be believed that he held me in contempt; but I cannot ſay whether this contempt was real or affected.

*Mr. Dallas.* Was there a full court at the time?

*Mr. Lucas,* I do not recollect, but I am ſure there was another judge beſide myſelf.

*Mr. Dallas,* Was there a great number of perſons attending the court?

*Mr. Lucas.* Yes Sir.

*Mr. Dallas.* What was the verdict of the jury?

*Mr. Lucas,* In the firſt inſtance it was 12 cents or 6 cents damages; I can't ſay which, but after they had given in this verdict Judge Addiſon obſerved that if they intended Coulter ſhould have coſts, they muſt find above 40 ſhillings, as a leſs ſum would not carry coſts. I think 40 or 41 ſhillings.

*Mr. Dallas.* Did you think the jury in finding this verdict conformed to the charge you had given?

*Mr. Lucas.* Yes Sir—I thought ſo.

CROSS EXAMINATION.

*Mr. Addiſon.* You ſaid that my opinion was in favor of high damages, what part of my charge induced you to believe that to be the caſe?

*Mr. Lucas.* I cannot repeat your words with accuracy, but I believed your direction was calculated to make the jury give high damages. I believe you did not think proper to detail in a minute manner the teſtimony of the witneſſes, but ſtated them in general. I believe one expreſſion was quoted from Solomon; "a good name was a precious jewel;" and from it I thought you meant to magnify the injury done to Coulter.

Mr. *Addiſon.* It was from Shakeſpeare I quoted, and not from Solomon.

Mr. *Lucas.* It is no matter what author it came from, whether Solomon or Shakeſpeare. I think I have read it however in Solomon's Proverbs. I am not acquainted with Shakeſpeare, but I mentioned the fact. You did uſe the expreſſion, "a good name was a jewel."

Mr. *Addiſon.* Do you mean to ſay that in your opinion a good name is *not* a jewel?

Mr. *Lucas.* I ſtand here Sir to ſtate facts, and not to give opinions.

Mr. *Addiſon.* You have been all along ſtating opinions among your facts; the queſtion therefore does not appear to me improper.

Mr. *Dallas.* I take this opportunity to aſſure the learned gentleman, that the counſel for the managers are diſpoſed to continue as they have begun, to treat him with all the delicacy the nature of the caſe will admit of; but we hope a ſimilar decorum may be obſerved toward our witneſſes, and that he will not again endeavor to make improper impreſſions by ſuch inſidious queſtions as, "Do you think a good name is not a jewel?"

Mr. *Addiſon.* I ſhall not fail to follow the example of decorum which may be ſet me, and I beg leave to aſſure the Senate, that if I do fail in any caſe it will be for want of knowing what is proper, and not from a want of reſpect to the gentlemen, their witneſſes, or the honorable members of this body. It did appear to me from the manner in which Mr. Lucas repeated my words, "a good name is a jewel," that he queſtioned the correctneſs of the idea. A regard to my own character, as well the reſpect I have already mentioned, will enſure on my part a ready acquieſcence in the ſenſe of the gentlemen. I wave the queſtion.

Mr. *Whitehill.* You muſt obſerve, Mr. Speaker, the arrangement made in this room has placed the Senate ſo far apart from the witneſſes and the defendant, that it is impoſſible to check improper queſtions the moment they are put. Then as you Sir and we are incapable from the diſtance to furniſh this check, we therefore wiſh the gentlemen of the bar to check for us, and I believe on this occaſion they have done it very properly. We want a ſtatement of facts, and not opinions.

Mr. *Addiſon.* You ſay it was an action of ſlander. Was the ſlander proved?

Mr. *Lucas.* I wiſh to expreſs myſelf fully, and had I not been interrupted by you, I ſhould have declared the facts in the manner I underſtood them.

I was saying that Mr. Addison had observed that a good name was a precious jewel, and I think the same. Yet as I thought this expression went to magnify the damage done to the character of J. Coulter, I judged it necessary to remark, that if a good name was a jewel, he had not valued it as such a jewel ought to be valued; and if he did not put a proper value on it, the damage done him by the slander ought not to be considered so great as if he had shewn more attention to preserve a fair reputation.

*Mr. Addison.* Was there any evidence on that trial of Coulter's having kept improper persons about his house, and that he was apprized of it.

*Mr. Lucas.* I believe there was such testimony, as far as I recollect.

*Mr. Addison.* Do you recollect what that testimony was?

*Mr. Lucas.* It was that a man had boasted he could keep company with a girl under Coulter's guardianship, and it was understood to be a discredit to his house that he kept such bad order in his family.

*Mr. Addison.* I thought mine a direct question, but your answer avoids it.

*Mr. Lucas.* Do you mean that the report had been told to Coulter? A question was asked, but I do not recollect.

*Mr. Addison.* Was not Laurence asked by Judge Wallace, did you ever tell Coulter this story? and he answered no.

*Mr. Lucas.* I do not recollect.

*Mr. Addison.* Did I not tell the jury that the evidence was sufficient for them to find a verdict of guilty upon; but as to the damages they were the sole judges, and that would depend upon the testimony they had heard. Did I not further say, that in cases of slander, when the defendant was found guilty, exemplary, compensatory, or mere nominal damage might be given, as the case required, and that which of these were to be given it was for them and them only to decide?

*Mr. Lucas.* I do not recollect it.

Mr. *Addison.* When you addressed the jury do you recollect what your charge was?

Mr. *Lucas.* Your charge had led me to the idea that you inclined to high damages, and the consideration I offered went on the contrary opinion.

Mr. *Addiſon.* Did you not ſay that if this man had carnal knowledge of the girl, and Coulter was informed of it, he ought to have brought an action of ſlander?

Mr. *Lucas.* I remember ſaying that if a good name was a valuable jewel that Coulter ought to have been more careful of it, and made a better uſe of the information which had been given to him of the improper conduct which took place in his own houſe.

Mr. *Addiſon.* Did I not ſay to the jury that although parents and maſters were bound to provide for the ſupport of their children and ſervants, yet they are not obliged to bring actions of ſlander on their behalf againſt thoſe who defame them?

Mr. *Lucas.* I do not recollect.

Mr. *Addiſon.* Did I not ſay that Mr. Coulter's not having brought an action againſt the perſon who aſſerted that he had an improper intimacy in his family, was no more a reaſon why he ſhould not recover damages in the preſent caſe, than that a man who had brought an action to recover damages for taking away his horſe, ſhould not recover damages becauſe he had not ſued another for taking away his cow. Nor why a man ſhould not recover in an action for ſlander, becauſe he did not proſecute an action of aſſault and battery.

Mr. *Lucas.* I do not recollect.

Mr. FINDLEY.

I do not wiſh to interfere with the gentleman or prevent the examination of witneſſes in his own way; yet I cannot but think theſe queſtions are irrevalent to the point under our conſideration. The queſtion with us is, had Mr. Lucas the right of addreſſing a jury, and did the defendant pervert or prevent the exerciſe of that right? I hope the examination may in future be kept more ſtrictly to that point.

Mr. MACLAY, Speaker.

If the Senate mean to take any order on that head, it ſhould be done by motion.

Mr. *Addiſon.* There are two charges made againſt me; the firſt that I did not allow the ſame force to Mr. Lucas's obſervations as he was inclined to believe they merited; I feel it therefore incumbent upon me to endeavor to ſatisfy the Senate that I had ſaid in my opinion nothing but what was ſtrictly proper, and that Mr. Lucas's opinions might be true; but at that time

they had nothing to do with the queſtion. But I will not ſtrain the patience of the Senate. I will aſk but one queſtion more.

You ſaid there was ſomething contemptuous. Was it in the words or in the manner?

*Mr. Lucas.* It was from your words and a compound of circumſtances that operated on my mind to think you either felt or affected contempt.

*Mr. Addiſon.* Was the court full? were all the judges there?

*Mr. Lucas.* I recollect that Mr. Wallace was there, for I made ſome intimation of my intention to ſpeak, in order that if he choſe he might ſpeak before me, and I remember he anſwered by ſome ſilent ſign, that he did not mean to ſay any thing.

*Mr. Addiſon.* Where did Mr. Wallace ſit? Did he not ſit between you and me?

*Mr. Lucas.* I do not recollect.

*Mr. Addiſon.* Did he not ſit on your right hand?

*Mr. Lucas.* I do not recollect.

*Mr. Addiſon.* Were not all the judges on the bench?

*Mr. Lucas.* I do not recollect.

*Mr. Addiſon.* The fact is they were all there. I have done.

Mr. Dallas ſuggeſted the propriety of proceeding in a more regular way. The defendant in this mode was making evidence for himſelf, which ought not to be admitted.

Mr. MACLAY, Speaker,

Remarked on the impoſſibility of taking down the teſtimony if gentlemen proceeded as they had done, by aſking queſtions, without waiting for the anſwers to be heard, and aſking others anew. He hoped the witneſſes would in future give their teſtimony in chief, in their own manner.

SAME DAY, 3 o'clock, P. M.

The trial reſumed.

WILLIAM AYRES, ſworn.

*Mr. Dallas.* We wiſh him to be aſked whether he was preſent at a court of common pleas in Allegheny county, held on the 28th of March 1801, and what paſſed at that time.

*Mr. Ayres.* I was present on the 28th of March 1801 in an action of slander between Jonathan Coulter, a justice and tavern-keeper (at that time) and James Moore, defendant, was trying. The defendant undertook to justify and shew, that what he had said was true. It was a charge for keeping a house of ill fame. He gave in evidence sundry irregularities, which went a considerable length to justify the words spoken of the plaintiff. After the testimony and arguments were closed, Judge Addison charged the jury; the words I cannot recollect; but it was in favor of the plaintiff, and it was the opinion of the judge, that the defendant had not made out his justification; and considering the plaintiff as a justice and tavern-keeper, the jury would be justified in compensating him liberally—more than nominal damages however. After he had concluded, Judge Lucas spoke to Judge Wallace, who shook his head; Judge Lucas then said he had something he wished to observe to the jury, and made some observations which had a tendency to induce the jury to find less damages, that he conceived the defendant had gone such a length in justification, that nothing more than nominal damages ought to be found. Both judges were careful to observe to the jury that the measure of the damages was *entirely within their province*, and left it to the jury solely.

After Judge Lucas had made his observations, Judge Addison said, "You see, gentlemen, there is a difference of opinion, and it is highly probable that gentleman and I will frequently differ in opinion." Judge Lucas said, "Gentlemen, you have heard the learned judges opinion, however this is my opinion." Judge Addison immediately after said, "what that judge has said may be all true, but has nothing to do with the question."

*Mr. Dallas* Did Judge Addison deliver this in a passionate or contemptuous manner?

*Mr. Ayres.* There is no impression on my mind at present that Judge Addison spoke, on that occasion, with more warmth than on other occasions. There is no impression on my mind, that he appeared to be in a passion, but he spoke loud and with some degree of warmth.

*Mr. Addison.* I wish the gentleman to be asked if it is not my usual way of speaking loud, so as to be heard through the house, which is a large one.

*Mr. Ayres.* Judge Addison does generally speak loud, so as to be heard distinctly through our court-house, which is a large one.

*Mr. Addiſon.* Another queſtion and I have done. You have often heard the judges of the ſupreme court; do they on the bench ſpeak as loud as I uſually do? I aſk this queſtion, becauſe it may appear to ſome that I am in a paſſion when my intention is only to be heard.

*Mr. Ayres.* My recollection of the manner in which the judges of the ſupreme court uſually ſpeak is, that they are not ſo loud as Mr. Addiſon. It does not appear to me that either of thoſe judges have naturally ſo ſtrong a voice as Mr. Addiſon.

*Mr. Addiſon.* I have nothing further to trouble this gentleman with, Sir.

TARLETON BATES, ſworn.

*Mr. Dallas.* I wiſh the gentleman to be aſked whether he attended the court of common pleas on the 28th of March, 1801, and to relate the tranſactions that took place at that time.

*Mr. Bates.* I was preſent at the court of common pleas on the 28th of March 1801. I do not diſtinctly recollect thoſe charges, but a general impreſſion of them remain on my mind. Judge Addiſon's charge was conſiderably animated; It had touched thoſe points which moſt judges uſually touch on ſuch occaſions; but in this particular caſe he conceived the jury might give high damages. Judge Lucas's obſervations impreſſed my mind that it was his deſire that the jury might give low damages. After Judge Lucas had concluded, Judge Addiſon turned to Mr. Lucas and ſaid to the jury, "Gentlemen, you ſee that *that* judge and I differ, and it is probable we ſhall frequently differ, yet what that gentleman has ſaid may all be true, but it is irrevalent to the cauſe now before you, and they ought to pay no attention to it. The jury returned into court, and gave *ſix cents* damages. Judge Addiſon aſked them if it was the intention of the jury that the defendant ſhould pay the coſts, or whether they were aware of their verdict, which would not entitle the plaintiff to recover them. They anſwered they were not; and the verdict was altered to forty-one ſhillings, and the judgment was entered accordingly.

*Mr. Dallas.* You have mentioned that Judge Addiſon turned round and ſaid, "that judge and I differ," &c. I wiſh you would ſtate what was the manner, whether in paſſion or contemptuouſly.

*Mr. Bates.* My ſtrong recollection is that he turned round this way * and laid a ſtrong emphaſis on the word *that* judge, and to my mind he did ſeem warm.

*Mr. Addiſon.* I wiſh to aſk whether the jury were not upon my left hand as well as Mr. Lucas, and whether I could have turned to ſpeak to them without turning to Mr. Lucas?

*Mr. Bates.* The jury were on your left hand, as well as judge Lucas, but you turned round to him.

*Mr. Addiſon.* Does not the jury-box come up even with the front of the bench?

*Mr. Bates.* It does not come up quite to the front of the bench; there is an interſtice between them ſufficient for a man to paſs.

*Mr. Addiſon* (roſe from his ſeat, and taking the right hand ſide of Mr. Bates, he aſked him) ſuppoſing this to be the bench, is not the bar there (pointing in front towards the Speaker's table) and the jury-boxes there (pointing to the left in an angle of about 20 degrees) and was not judge Lucas ſitting here, (pointing to Mr. Bates, who was along ſide of him.)

*Mr. Bates.* Am I to conſider you as the preſident of the court, and myſelf as judge Lucas?

*Mr. Addiſon.* Yes, I aſk the queſtions in this way, to ſhew that I could not turn to addreſs the jury, without turning toward Mr. Lucas.

*Mr. Bates.* The poſitions are nearly as judge Addiſon has deſcribed them.

*Mr. Dallas.* Did you conceive that in turning round, Mr. Addiſon turned more to point out Mr. Lucas, than he did to addreſs the jury?

*Mr. Bates,* It is my opinion that he turned more round to Mr. Lucas.

## SECOND CHARGE.

*J. B. C. Lucas* was called again.

*Mr. Dallas.* I wiſh the gentleman to ſtate, whether he was preſent at a court of quarter ſeſſions, held in Alleghany county on the 22d, of June, 1801, and to relate what paſſed at that time.

* Mr. Bates threw his left hand back, and from the attitude it would ſeem that Mr. Addiſon pointed to Mr. Lucas.

*Mr. Lucas.* On the 22d of June, 1801, I was ſitting as an aſſociate judge at a court of quarter ſeſſions in Allegheny county. In the firſt inſtance, in the morning I ſaw two judges on the bench, Mr. Addiſon and Mr. M'Dowell, and I became the third one. I noticed a little before the time the charge was delivered to the grand jury by Mr. Addiſon, that Mr. Addiſon ſpoke a few words low, in a whiſper, to Mr. M'Dowell. I noticed alſo, that a little after thoſe few words were whiſpered, Mr. M'Dowell retired from the bench. I noticed alſo, that after Mr. M'Dowell had retired, that Mr. Addiſon and I remained alone on the bench. We were in that ſituation when Mr. Addiſon began to addreſs the grand jury. After he had ended his addreſs, I attempted alſo to addreſs the ſame jury. My addreſs began in theſe words: "*Gentlemen of the grand jury.*" Immediately after I had pronounced a word or two more, I was interrupted by Mr. Addiſon. The manner in which he interrupted me was not abrupt and rebutting, but with a mild countenance, and he ſeemed to entreat me not to addreſs the jury; milder than I had been interrupted heretofore. Mr. Addiſon inſiſted I ſhould have a conference with him upon the merits of what I had to ſay to the jury. And I underſtood either explicitly, or by implication, he would communicate it if he thought it was proper, or would anſwer a good purpoſe. I anſwered, that as he had addreſſed the jury, without previouſly commnicating his charge to me, I would ſerve him the ſame way, and would take all the riſque of what I had to ſay to the jury; and to the beſt of my recollection attempted to addreſs the jury. Mr. Addiſon interrupted me again, and endeavored to perſuade me, with all the force he was poſſeſſed of, both by geſture and mild expreſſion, to prevail on me to deſiſt from my attempt. I then inſiſted, ſpeaking with him, that I would addreſs the jury, it was then a proper time for me to do it. Thereupon he requeſted me again to let him know what I had to ſay to the jury. I had in my hand a paper, containing what I had to ſay to the jury, and I tendered it to Mr. Addiſon. Directly Mr. Addiſon changed his ground, and inſtead of advancing his hand to receive the paper from mine, he told me we ought to adjourn, and that in the afternoon, I would be in the ſame ſituation, and might at that time urge my right as well as then. I anſwered him, I thought the preſent time was the proper time for me to deliver my charge, and I could not agree to an adjournment till afternoon. He then ſuggeſted the propriety of having a conſtable choſen, to act in that capacity to the grand jury. I told him I thought my addreſs to the jury ſhould precede that operation. He inſiſted

again that the conſtable ſhould be choſen, ſtill in a perſuaſive way; I yielded, and a conſtable was immediately choſen. I inſiſted again upon addreſſing the jury, and made an attempt. Mr. Addiſon then did not ſeem any more to wiſh to entreat and perſuade me to any thing, but for his part conſidered the court adjourned. I refuſed to conſent to it, and Mr. Addiſon left his ſeat, came down the ſteps and ſaid the court may conſider itſelf as adjourned till three o'clock. For my part, I remained on the bench half a minute only to vouch that I was not removing, becauſe Mr. Addiſon conſidered the court adjourned, but becauſe it was not in my power to hold the court alone.

In the afternoon, at three o'clock, I repaired to the court-houſe, and took my ſeat on the bench. Mr. Addiſon went on the bench alſo. I intimated directly my deſire to have another judge on the bench beſide ourſelves; he anſwered me, that he had jnſt now ſent for judge M'Dowel. Judge M'Dowel came a few minutes after, and took his ſeat alſo. I addreſſed Mr. M'Dowel and gave him a ſhort account of the moſt important part of what had taken place at the court in the morning, between Mr. Addiſon and myſelf, and further told him my determination was to addreſs the grand jury inſtantly. The grand jury was then in the box. Mr. M'Dowell anſwered me it was a new queſtion, which he wiſhed to have poſtponed until there would be a more full court; he added that he was not ready to give an opinion upon that queſtion. I replied to him that the deciſion of the queſtion, in my opinion, could not admit of poſtponement, that nothing but that had prevented the grand jury from attending to their buſineſs; that they muſt attend to their buſineſs. And that I thought what I was going to addreſs to them might be of material uſefulneſs. Mr. M'Dowell ſeemed to be at a loſs, and ſaid, ſince you are with us, why don't you go along with us? Why do you create diſſentions? I obſerved I did not mean to create diſſentions; I claimed the ſole right which I had, and that right did not interfere with the rights of others. I added, that I did not intend to preclude any of the judges from addreſſing juries as often or as ſeldom as they were pleaſed to do it; that for my part, I intended to exerciſe that right according to my diſcretion, without controul. As he was ſtill declining to give an opinion on the queſtion, by various evaſive anſwers, I put anew the ſame queſtion to him, in theſe words, as far as I can recollect. "Do you deny me the right of addreſſing the grand jury, which right I now claim?" He anſwered, "yes, I do." During all that time Mr. Addiſon was ſilent, or if not ſilent, did not med-

dle with our converſation. Inſtantly it came to my mind, that the right I claimed, was a right emanating from the conſtitution, and that it was not within the pale of the court to diſpute that right, or to hinder me from exerciſing it. I then concluded in my mind, that the opinion of the court could not be binding on me, and in purſuance of that conſideration, I attempted again to addreſs the jury. Mr. Addiſon inſtantly attempted to prevent me by ordering ſilence. It was no more the tone he had in the morning. It was a ſtern and threatening tone. And as I was going on, pronouncing two or three words more, I was interrupted anew by Mr. Addiſon, who told me, "Sir, I did let you explain yourſelf with Mr. M'Dowel without interfering, I'll now put in force the opinion of the court." I believe, to the beſt of my recollection, I inſiſted on exerciſing my conſtitutional right, without acknowledging his authority, or words to that purpoſe. He then uttered theſe words: "Silence, Sir, we will not ſuffer you longer, and if you do not deſiſt, we will make you do it." I then deſiſted, not expreſsly, but by ſaying nothing; that is, I made no expreſs or formal renunciation of my right. The laſt words Mr. Addiſon uſed, appeared to me in a ſtill more imperious or threatening way, and I went no further from two conſiderations. The firſt was, becauſe I thought I had made ſufficient exertions to aſſert my right, and to offer my ſervices to the public. The ſecond was, becauſe I took into view, that ſomething might happen, that would be an evil example to the bulk of the people, with reſpect to the court, and too great a mortification to my feelings. I do not recollect any thing more.

*Mr. Dallas.* Did you deſiſt, and leave the bench, in conſequence of threats from Mr. Addiſon?

Mr. *Lucas.* If Mr. Addiſon had not ſaid, "we will make you do it," I do believe I would have perſiſted longer to aſſert my right. But I did not leave the bench from fear of Mr. Addiſon.

Mr. *Addiſon.* Do you recollect at what time the conſtable was choſen?

Mr. *Lucas.* I cannot recollect at what ſtage of the controverſy, in the morning, the grand jury was directed to chooſe a conſtable.

*(Here* Mr. *Addiſon read ſome of the depoſitions of the witneſſes, in order to call the fact to his former recollection.)*

But Mr. Lucas did not recollect the preciſe time, yet added that he made the attempt to addreſs the jury both before and after the conſtable was choſen.

Mr. *Addiſon.* Did you ever tender me your addreſs till after I had ſpoken to the jury, "that you had ſomething that you had not communicated to me?"

Mr. *Lucas.* I do not recollect, whether it was before or after.

Mr. *Addiſon.* What was the ſubject of my charge on the 22d of June 1801?

*Mr. Lucas.* I thought it was a very proper charge. I admired it.

Mr. *Addiſon.* Did not every word of it relate to the duties of a grand jury?

Mr. *Lucas.* I believe every word of it related to the duties of a grand jury; but I did not think it contained all that might be ſaid to a grand jury.

Mr. *Addiſon.* What was the ſubſtance of your charge? Did it reſpect any errors I had delivered, or was it to ſupply any omiſſions?

Mr. *Lucas.* There was no kind of criticiſm in my charge on the one Mr. Addiſon had delivered. There was an amplification of inſtructions. I intended it to ſupply omiſſions.

Mr. *Addiſon.* Did it relate to any indictment or any immediate duty to be diſcharged by that grand jury?

Mr. *Addiſon.* Is this the charge you intended to deliver?

(Here Mr. Addiſon preſented Mr. Lucas with a newſpaper, containing a charge, for which ſee the appendix.)

Mr. WHITEHILL:

We may ſpend a great deal of time in hearing queſtions and anſwers in this way without deriving the information we are in ſearch of. The ſubject of our enquiry is not whether the charge of one judge was relavent, and that of the other irrelevant, but whether one judge did not aſſume over the other an authority not allowed by the conſtitution or laws.

Mr. Lucas had no objection to anſwer Mr. Addiſon's queſtion, though the word "immediate" ſeemed intended to tie or entangle him. My charge was not intended to apply to any particular caſe that I knew of then pending before the jury, but to enable them to perform their duties generally and with propriety and advantage. I never intended to bring before them extraneous matter, but merely to adviſe them to loſe ſight of ſuch ſubjects whenever introduced.

Mr. *Lucas.* So far as I have read I know it to be my charge, but I cannot anſwer for the whole; unleſs I was allowed time to read it through.

Mr. WHITEHILL

Thought it would be unneceſſary to ſpend ſo much time in reading a long paper, the merits of which were unimportant to the iſſue of the preſent queſtion.

Mr. MACLAY, Speaker,

Aſked Mr. Addiſon if he had done with the witneſs.

Mr. *Addiſon.* I have not done yet, Sir, I wiſhed the paper to be recognized; I know myſelf the whole truth of this buſineſs, and conſider it important, notwithſtanding the enquiry will conſume ſome time, that the Senate ſhould be fully informed; and this paper I think will furniſh a clue, which may evince that it originated in the malice of a certain individual, who is at the bottom of it.

Mr. *Dallas.* I ſhould diſcharge my duty ineffectually was I to ſuffer inſinuations of this nature to paſs unobſerved. Can any thing like a clue be ſuggeſted as a mode of diſcovering the nature of the proceeding had againſt the defendant? What improper action is imputable to the Houſe of Repreſentatives or the managers on their part in this proſecution? What are the facts as ſtated in the teſtimony which came before the Houſe in the firſt inſtance? What is the teſtimony delivered on this floor? Has not the whole been fair and open? Who would he inſinuate has been at the bottom of it? The bottom of it muſt have been his own improper conduct to a brother judge. His conduct here, the language he has juſt uſed, of a clue, a hidden clue, has betrayed a temper in that gentleman, which I did not expect he would have expoſed on the preſent occaſion.

Mr. *Addiſon.* I am ſurpriſed at the ſtrong indignation expreſſed by the gentleman of counſel for the managers. I call upon the Speaker, the Senate, and all the perſons preſent. Did I ſay a word that had any alluſion to the members of the Houſe of Repreſentatives or their managers? Far be it from me. I am too well aware of the ſituation in which I ſtand. I too well know the duty I owe to the commonwealth and all its conſtituted authorities, to preſume to cenſure the gentlemen alluded to. I truſt my words will be taken in my own ſenſe of them, and not perverted to bias your opinions againſt me. What I

utter I will abide by, not what others may alledge me to have uttered.

(Here was a ſmall ſuſpenſion in Mr. Addiſon's ſpeech, which induced Mr. Maclay to enquire if he intended to put any further queſtions to Mr. Lucas.)

Mr. *Addiſon.* I ſhould wiſh to be permitted to go on with my remarks. I know well the value of the time of the Senate, and I will not preſume to treſpaſs on their attention. I do not affect delay; my time is precious alſo to myſelf, and I am abſent from my family, at conſiderable inconvenience. I therefore may be ſuppoſed to wiſh for the ſpeedy concluſion of this trial; but then it ſhould be ſuch a concluſion as I think conſiſtent with juſtice to my perſon, and juſtice to my reputation. No want of candor has been ſhewn on my part, and I truſted from the liberality and indulgence on the part of the managers, that I ſhould not be defeated in my object through either the miſapprehenſion or miſrepreſentation of the counſel employed againſt me.

The queſtions I intended to put to this gentleman would ſhew to the world that there is an individual not either in the legiſlative or executive departments of the government, who is at the bottom of this buſineſs; who has laid every plan and directed every movement throughout the whole tranſaction. This is what I meant to ſhew, and this knowledge could only be got from Mr. Lucas. If becauſe the counſel don't know theſe things, they are to object to every queſtion I am to put, more time would inevitably be conſumed, than would be neceſſary to a full diſcloſure of the whole truth; and as I have pledged myſelf not to conſume a moment of your time beyond abſolute neceſſity, though I have the eſtabliſhment of ſuch an important fact in view, I wave all further enquiry on that point.

Let him now be aſked whether this was the firſt time he knew the opinion of the court to be oppoſed to his delivering charges to grand juries.

Mr. *Lucas.* Although he knew himſelf under the protection of the court, which would not permit improper queſtions to be aſked him, had not however any objection to anſwer every enquiry, and the reſult would probably ſhew the miſtake of the inſinuation. Yet he hoped that the Senate would alſo protect abſent perſons from malicious inſinuations.

Mr. *Addiſon.* The witneſs is undoubtedly under the protection of the court, and if it is ſuppoſed that my queſtion is improper, I will not ſay another word.

## Mr. WHITEHILL.

I do not know how far this queſtion may go, poſſibly it is intended to make him criminate himſelf; if ſo, the gentleman had better ſhew this by another witneſs than by Mr. Lucas; for it would be unfair to expoſe a witneſs to ſuch an hazardous circumſtance.

Mr. *Lucas*. I know of no clue to which he has alluſion. I am fully prepared to anſwer him every queſtion. With reſpect to the laſt, the fact is that previous to this attempt and prevention, I had made another attempt and had been prevented. I thought even then that I had a conſtitutional right to deliver my opinion, and inſiſted upon it with diffidence and moderation; afterwards I conſulted with ſome of my friends, perhaps Mr. Addiſon may aſk me who they were; I am not afraid to anſwer that enquiry, but it was not through a ſpirit of malice. I ſay I conſulted them, and aſked whether I was to be conſidered as judge, merely in name or in fact. I found it an uniform opinion that judges ſitting on the ſame bench poſſeſſed equal powers; that the preſident did not ſit as a judge of judges, but as a judge of law. I made application to the attorney-general, under an idea that he would lay my grievance before the ſupreme court, who would ſettle the point. That tribunal waved the deciſion, not becauſe they doubted, but becauſe they did not conſider themſelves the proper tribunal; they gave however an opinion, by ſaying that a judge ſitting on the ſame bench had equal rights, and that an aſſociate judge had not only an equal right to give his opinion, but that he was bound in conſcience to deliver it, if he differed from the preſident. After having thus informed and ſatisfied myſelf of my right and my duty, I attempted again to exerciſe the one and perform the other in the manner I have ſtated.

Mr. *Addiſon*. Was there not a conſultation between Mr. Lucas, another judge and me, on the ſubject of charges to juries, and what was the reſult of that converſation.

Mr. *Lucas*. Yes, there was a conſultation, and the reſult was that we parted as we came in, diſagreeing in opinion.

Mr. *Addiſon*. I aſk what was the opinion of the other judges, not what was your opinion.

Mr. *Lucas*. Mr. Addiſon told me in court that he wiſhed to have ſuch a conſultation, to which I ſaid here was the proper place to hold it. He replied that we could not have it here, but might hold it at any other place. He propoſed his own houſe,

which I refuſed, but on thinking he might adopt my ideas if he was liberal, or correct them if I was miſtaken, I conſented. We went to a tavern; Mr. Addiſon was very polite and attentive till we had entered on the merits of my claim, in ſupport of which I aſſigned the reaſons that induced me to believe it was my right. He then became rather warm or paſſionate, but told me he did not mean to inſult me; he even wanted me to drink with him. This I refuſed to do. He ſaid he owed me no ill will. To this I replied, it did not ſurpriſe me, as I had never done him an injury, but you nevertheleſs deprive me of my conſtitutional right. Mr. M'Dowell was alſo preſent. Shortly after I took my leave of them, and we parted.

Mr. *Addiſon*. Let him be aſked, if he was not told that in all matters between man and man in every caſe that could come before a traverſe jury, every judge had full liberty to expreſs their opinion in as free and ample a manner as the preſident; but in reſpect to the grand jury, if any judge thought that the preſident had omitted any thing, or was miſtaken as to the queſtion before them, there alſo every judge had a right to give his opinion; but that the moſt decent way would be to communicate it firſt to the preſident, who would ſtate it to the grand jury, and then if the preſident declined to do it, he might do it himſelf. That in what related to grand juries it had been uſual in the ſupreme court for the chief juſtice to be conſidered as the proper organ to ſtate to them the preliminary matters, and what that matter ſhould be was left entirely to his diſcretion. So had been the practice in the common pleas. If a preſident judge was to abuſe this power, any other might check him; but then it ſhould be in a private converſation, and not by making an appeal from him to the grand jury: on this point he was told that he ought not to expect to control the whole bench, and oblige them to abandon a ſettled practice.

Mr. *Lucas*. I have already expreſſed my view of the tranſactions. He aſks queſtions out of my recollection, and which may be difficult to aſcertain. So far as his facts do not agree with mine, we diſagree. The right to addreſs a petit jury was granted, but in a very ſparing manner. But in reſpect to the other it was expreſsly declared that if I had any thing to ſuggeſt that I wiſhed to have communicated to the jury, it muſt be firſt communicated to him, the judges would judge of the propriety of it, and he was to mention it. In no caſe whatever was I allowed myſelf to addreſs the grand jury. I thought the conſequence reſulting from this doctrine would be, that inſtead of being a judge on the bench, I and the other aſſociates

were to be merely counſellors on the bench. As a judge I was anſwerable for the opinions I gave. He could not anſwer for me. What he might ſay to a grand jury ſhould ſtand upon its own merit, and it was but equal juſtice I ſhould ſtand on mine.

Mr. *Addiſon.* He then admits that the ſenſe of the court was againſt him.

Mr. *Lucas.* It was not the court; we were not in the court-houſe, but in a tavern, and the declaration of two was not a proof to me that all the judges of Allegheny county coincided in that opinion.

Mr. *Addiſon.* I wiſh he may be aſked whether he was not told that the aſſociate judges might in caſe of error or omiſſion in the preſident, addreſs the jury; but the moſt decent way would be to communicate it to the preſident.

Mr. *Lucas.* I declare that Mr. Addiſon gave it explicitly as his opinion that I could not addreſs a grand jury under any circumſtances. Mr. M'Dowell ſupported Mr. Addiſon, and ſaid, the preſident was the ſole organ of the court, and I had no right to addreſs the jury; Mr. Addiſon corrected Mr. M'Dowell, and ſaid it was grand juries only: to which Mr. M'Dowell aſſented.

Mr. *Addiſon.* This relates to the preliminary matter which all judges uſe in delivering charges to grand juries, and not what immediately relates to the duties of that body.

Mr. *Lucas.* I repeat it, it related to the whole ſubject of grand juries, and there was no opening left me to addreſs a grand jury. If I was to take their opinion for my rule, there was no way whatever.

Mr. *Addiſon.* Let him be aſked whether in December 1800 he did not ſay before he was ſtopped, that it is not any thing relating to the duties of grand juries on which I am about to addreſs them.

Mr. *Lucas.* I do not recollect ever having ſaid any ſuch thing; but I do now recollect a circumſtance that did not occur to me before; it is this, that when I was ſtopped this time it was not with the mildneſs and entreaty that he had uſed when I conſtituted half the court. He might now have felt himſelf more independent of me and better ſupported, having judge M'Dowell by his ſide; and his manner appeared to me to have gratified a conſiderable number of perſons who were in court.

Mr. *Addiſon*. Well then, let him be aſked was he going to ſay any thing to the grand jury, which related to their immediate duties.

Mr. *Lucas*. I thought I was going to ſay ſomething which would aſſiſt them in the diſcharge of their duty; I had heard Mr. Addiſon denounce from the bench a deſcription of men, in a manner likely to render thoſe who are within it, objects of perſecution, if any of them fell under the cognizance of the grand jury. I had heard Mr. Addiſon tracing the hiſtory of and declaiming againſt the ſocieties of Illuminati in Germany, the Jacobins in France. And after having painted theſe in the moſt frightful colours, their black deſigns, their horrid wickedneſs, tending to ſubvert all civil and ſocial order, he went on to alarm us with our own danger. He ſaid theſe ſocieties had their emiſſaries amongſt us; they were daily making converts in our country, they were growing very powerful, and he feared the conſequences. He added, as proof of the exiſtence of ſuch emiſſaries making proſelytes, certain reſolutions of the ſtate of Kentucky, on the unconſtitutionality of certain acts of Congreſs. He produced alſo the reſolutions of Virginia; (I am not certain that I uſe his words, but in the ideas I am not miſtaken). To ſhew that they were rapidly ſpreading their baleful influence into this ſtate, he adduced the turn the recent election for Governor of Pennſylvania had taken; and from all this he inferred that ſuch perſons ought to be diſcountenanced as the ſubverters of law, order and good government.

I thought theſe declarations, coming from the bench, poſſeſſed of ſuch authority at ſuch a time, might alarm and agitate the minds of the citizens, and knowing when this is the caſe, that perſons who have fell under ſuch ſuſpicions ſeldom have a fair trial, I wiſhed to call the attention of the jury to what related to their particular duties, and induce them to leave out of their minds every thing relative to the Jacobins and Illuminati of other countries. That there they could do us no harm; and if they had emiſſaries here to enſnare us, we had laws and magiſtrates to protect us, and to puniſh them if they were guilty of a crime. As a member of the court I could not be ſilent, and by that ſilence give my ſupport to an hiſtoric narrative calculated to do ſo much injury. I wiſhed to remove their fears, and diſpel their apprehenſions, and that is all I intended to do.

Mr. *Addiſon*. Whether he does not know, or has not heard of ſecret ſocieties in the weſtern country, bound by oath not to divulge their tranſactions.

Mr. *Dallas*. I wiſh the gentleman to be indulged to the utmoſt limit in his croſs examination; but when he is opening a field of this deſcription, and calls upon us to ranſack the journals of ſecret ſocieties, which are not within the call of the Houſe, and as he inſinuates, with a view to criminate the members who are not here to defend themſelves, I cannot avoid interfering.

Mr. *Addiſon*. This is no part of my call. I did not bring the ſubject in; it is the witneſs on the part of the commonwealth who has brought it in. But is it not the duty of a judge, who ſuppoſes ſuch things going on, and is convinced of their truth from the circumſtances of the country, to warn his fellow-citizens againſt them.

Mr. *Lucas*. I am very willing to anſwer. I know of no ſecret ſocieties in the weſtern country; but I know if I was a member of one I ſhould not be obliged to anſwer the queſtion.

Mr. *Addiſon*. I aſked if he had heard of any ſuch thing exiſting.

Mr. *Lucas*. I never heard of any ſuch ſociety exiſting in the weſtern country ſince the Mingo, which diſſolved itſelf a long time ago. I have heard people aſſerting of one another, that they belonged to ſuch or ſuch ſocieties; but I always conſidered this conduct as irritating and inſulting to one another: but I have heard of this but very ſeldom, and then from very trifling characters.

Mr. *Addiſon*. He ſaid he conſulted with ſome of his friends. I aſk who were the friends, and what advice he got?

Mr. *M'Kean*. After Mr. Lucas had been prevented the firſt time from addreſſing the grand jury, I received an affidavit eſtabliſhing the fact. Whereupon I made a motion in the ſupreme court for a rule to ſhew cauſe why an information ſhould not be filed againſt Judge Addiſon. Some time after this Mr. Lucas came to Philadelphia and called upon me. I told him what had paſſed in the ſupreme court, and that there was no doubt of his right to addreſs the jury. I adviſed him to perſiſt in the exerciſe of that right, and gave it as my opinion, that inſtead of leaving the bench, he ought to have gone on.

Mr. *Addiſon*. It is not to Mr. M'Kean that I allude. What he did I preſume was properly done. The perſon to whom I alluded I will name; it was Judge Brackenridge. And I aſk him now, whether Mr. Brackenridge did not adviſe him to this buſineſs, and whether he does not know that Brackenridge

wrote petitions, procured ſignatures, and particularly did he not adviſe to proceed by way of information to the ſupreme court in the firſt inſtance, and afterwards by impeachment here?

*Mr. M'Kean.* I am againſt this queſtion being put, as it has nothing to do with the ſubject before the Senate. It ſurely is immaterial to the merits of the caſe, whether this gentleman or any other perſon adviſed him to proceed by information to the ſupreme court, and who recommended afterward the mode of impeachment. I will tell him however that from what fell from the judges of the ſupreme court when the rule to ſhew cauſe was before them, it might be eaſily inferred that impeachment was the proper mode to correct the evil complained of.

*Mr. Addiſon.* It is the firſt time in a criminal court of juſtice that I ever knew a witneſs prohibited from anſwering a queſtion of this kind. The queſtion leads to this, Has this proſecution originated in principles of public good, or did it ariſe from motives of private malice? And when that is anſwered I mean to ſhew that this proſecution did not ariſe from motives of public good, but from perſonal malice, not on the part of the members of the legiſlature, but from judge Brackenridge, who has not only a perſonal enmity to me, but has ſworn vengeance againſt me, and that he ſet on Mr. Lucas as his inſtrument; that he aſſiſted him in preparing the charges he wanted to deliver to the grand juries, and has been the prime mover thro' the whole tranſaction, till its arrival at the preſent iſſue.

*Mr. Dallas.* If the defendant is permitted to proceed in this mode, it will no longer be the trial of judge Addiſon, but the trial of judge Brackenridge; for I venture to aſſert if the aſſertions thrown out by the defendant can be ſubſtantiated, fouler aſperſion were never proved on a judge. He aſſerts that this buſineſs has arrived at the preſent ſtage under the guidance of motives the moſt baſe and malignant that can be imputed. He is ſuppoſed not to be in purſuit of the public good, but gratifying private malice, the growth of a foul, tainted and corrupt heart; that he not only writes libels againſt the defendant, but ſolicited hundreds to ſign them. A temper that compels a man in the ſituation of the defendant, to an undertaking ſo foreign from his defence, will prove no ſmall evidence to the ſenate in ſupport of an opinion formerly ſuggeſted. He appears to endeavor, by a ſide wind, to impute motives without giving even probable evidence that they exiſted. Is this the conduct before this honorable court, of a man who

had been ten years president of one of your courts of law? Would he admit in his court as evidence such testimony? If he would he could not know, or knowing would not perform the duties of his office. No doubt the understanding of the Senate, although they are not practising lawyers, is sufficiently informed to know, that judge Brackenridge, who is not charged, and who, if he was, is not present to defend himself, cannot by any subterfuge or law fiction, be placed here on his trial in the room of the accused. The character of a judge ought not to be arraigned on suggestion without proof. Was the legislature to countenance such a mode of proceeding, every place of honor, trust and profit, would be abandoned, or the officers would be driven with disgrace from the exercise of their professions.

I hope the gentleman will in future treat the reputation of other gentlemen with as much delicacy as he wishes his own to be respected; and that this may be the last time we shall be forced to oppose a conduct that cannot arise from ignorance, be its true motive what it may.

*Mr. Addison* rose with a view to speak, when

*Mr. M'Kean* interfered, and hoped the common rules of proceeding would be adhered to, and that before Mr. Addison was permitted to proceed, the Senate would decide whether the question he had just put, was or was not to be answered.

Mr. WHITEHILL.

The gentleman ought to be permitted every mean of defending himself; but he cannot be permitted to travel out of the subject so far as to bring another person before us, who is not charged, with a view to evade his own impeachment. The gentleman mentioned before that he could shew us a clue to this business, and now his clue is, that he supposes a brother judge, who ought to oppose usurpation, has guided another judge to the place where those evils may be corrected.

Mr. MACLAY, Speaker.

If Mr. Addison will reduce his question to writing, the Senate can decide whether or not it should be put.

Mr. WHITEHILL

Thought it unnecessary to reduce the question to writing, as its impropriety was fully understood.

Mr. *Addiſon* was ſorry to have treſpaſſed on the time of the Senate, and excited ſo much ſenſibility. He would therefore wave the queſtion, although he thought it not only unexceptionable, but important to his defence.

Adjourned.

TUESDAY, January 18, 1803.

Mr. *Dallas*. When the court adjourned yeſterday judge Addiſon was croſs examining Mr. Lucas.

Mr. *Addiſon*. I have no further queſtion to put to the witneſs except one. Is this the charge he intended to deliver to the grand jury?

On looking over it he anſwered.

This is the charge I intended to deliver to the grand jury at the time I was prevented, and as laid in the impeachment.

Mr. *Addiſon*. Did you come to court with the charge written out, and prepared to deliver it?

Mr. *Lucas*. I came to court with my charge written, but not fully determined unleſs I perceived that what the preſident ſhould ſay would ſupercede the uſefulneſs of that charge; but I perceived that it did not ſupercede the uſefulneſs of that charge.

Mr. M'*Kean*. I wiſh the witneſs to ſtate the circumſtances which took place at the firſt prevention.

Mr. *Lucas*. On the 22d December, 1800, after Mr. Addiſon had delivered his charge, I waited for the ſenior judges to addreſs the ſame jury—finding they did not, I addreſſed the ſame jury. I pronounced two or three, or perhaps four words, as a part of my addreſs, when I was interrupted by Mr. Addiſon in this manner: "Stop, Sir; you have no right to addreſs this jury. I am the ſole organ of the court. To the beſt of my recollection I anſwered, that I did not claim the right of being the organ of the court; but I only claimed the right to be the organ of my own ſentiments to the jury, as a member of the court. I attempted again, and was again interrupted by Mr. Addiſon. Whether I attempted again or not, I cannot affirm; but certain it is I attempted theſe two ſeveral times. As I was ſaying ſomething to the jury, the jury was moving and went off. I recollect nothing more relating to that ſubject, that is of any importance. It was on the evening

of that day therefore I left court, that Mr. Addiſon called me to the conference.

It was in conſequence of that prevention that I applied to the attorney-general, that he might lay before the ſupreme court thoſe facts.

Mr. M'*Kean*. What you were about to ſay, did it relate to the duties of a petit jury or what?

Mr. *Lucas*, My intention was to apprize the jury that I could not join with Mr. Addiſon, with all the accounts he had given of the Illuminees of Germany, and the Jacobins of France,—but only as far as related to their immediate duties—but that they ſhould diſcard all party ſpirit, &c. and know their fellow-citizens merely as fellow-citizens. That ſhould there be ſuch a communication as was mentioned between Kentucky and Virginia, it was not within the verge of their power, and they ſhould pay no attention to it.

I attempted to ſay on the 22d June, 1801, what I had attempted to ſay on the 22d December, 1800.

Mr. *Dallas*. When Mr. Addiſon adjourned the court, ſo far as he could adjourn it, was it before or after he left the bench?

Mr. *Lucas*. The declaration of judge Addiſon, that the court might conſider itſelf adjourned, I do not recollect perfectly whether it was made before he left the bench, but I recollect after he had deſcended a ſtep from the bench, he ſaid the court was to conſider itſelf adjourned till three o'clock, and I recollect it was contrary to my wiſhes.

WILLIAM GAZZAM, affirmed.

I was preſent at a court of quarter ſeſſions in Allegheny county on the 22d day of June, 1801. My curioſity was excited to attend the court, on account of various political charges which I had heard of and read. I heard the charge of judge Addiſon. His charge was ſhort, and did not contain much, if any political matter, if I recollect, at that time. Immediately after there was a paper in judge Lucas's hand—and he attempted to riſe. Judge Addiſon laid his hand very gently on Lucas's arm, I heard the following words from Judge Lucas: "I muſt, Sir, inſiſt on my right to addreſs the jury." Lucas then again attempted to riſe. Judge Addiſon gently again put his hand upon his arm, with a ſmile, and a ſhort converſation. It could not be called an abſolute prevention. The third time he did in like manner; and then I heard judge Ad-

diſon obſerve, let a conſtable be ſworn. Lucas objected to it, and ſaid now was the proper time to addreſs the jury. Judge Addiſon then addreſſing the jury, ſaid, this gentleman has ſomething to deliver to you, which he will not ſhew to me, or inform me of. Judge Lucas then preſented the paper to Mr. Addiſon in this manner—"Here it is, Sir, you may read it." I heard no anſwer from Judge Addiſon, nor did I ſee any advance to take the paper, although it was held a ſufficient length of time. Judge Lucas drew back his hand, roſe, and again began to addreſs the jury. Judge Addiſon aroſe from his ſeat, at that moment, and ſaid, Gentlemen of the jury, you may go or ſtay, as you pleaſe, and with a gentle turn towards the bar, ſaid, ſo far as in me lies, you may conſider the court adjourned till three o'clock, and then proceeded to deſcend from the bench, and when down one ſtep, he turned round, and in his uſual emphatic mode of expreſſion, ſaid, this court may conſider itſelf adjourned till three o'clock. Until judge Addiſon expreſſed a poſitive adjournment, every one appeared to be gaping at each other with amazement. After which however every one prepared for departure. I am ſenſible there was no conſtable either choſen or ſworn till the after part of the day. If there was, my attention muſt have been turned off for the moment, which I cannot conceive was the caſe.

At three o'clock in the afternoon I went to the court-houſe. Judge Addiſon was the firſt that came in, and when ſeated, ordered the cryer to go to Steel Temples, Eſq. and fetch judge M'Dowell. While the conſtable was gone judge Lucas came in, and ſeated himſelf on the bench. There appeared to be two or three words, which I did not hear—but judge Addiſon ſaid, I have already ſent for judge M'Dowell. When Judge M'Dowell came, ſome converſation paſſed ſo low I could not diſtinguiſh what it was.

Soon after which judge Lucas aroſe and attempted to addreſs the jury, and if I miſtake not, there was ſome interruption of a gentle nature again, by both judges alternately, for a ſhort time. But there was nothing of violence at that time. Judge Lucas attempted again, and ſpoke four or five words, when Judge Addiſon addreſſed him in an emphatic manner, and in a very imperious tone of voice. "Stop, Sir, or ſilence Sir, I don't recollect which. If you do not deliſt, we will take means to make you. Then it was that I obſerved Judge Lucas exceedingly diſcomfited. Judge Addiſon obſerved, I have ſtopped you once at my own riſk, and I am ready to take the conſequences—and ſomething was added about their being now

jointly ready to prevent him. Judge Lucas then turned round to judge M'Dowell and ſaid, "Sir, is that your determination." He anſwered, "it is, Sir." Whereupon judge Lucas ſat down the ſpace of a minute—it appeared to me from his countenance, that he ſat down for a minute to recover from a ſhock, which I plainly perceived he had received. He then aroſe and left the bench, upon which a pretty general ſarcaſtic ſmile or ſneer took place among all the gentlemen of a certain deſcription—amongſt whom I was grieved to ſee the preſiding judge of the court.

Mr. *Dallas*. Whether Mr. Addiſon made any overture in the afternoon to read Mr. Lucas's charge.

Mr. *Gazzam*. He made no overture of the kind. If he had I ſhould have obſerved it.

Mr. *Dallas*. Whether Mr. Lucas tendered the charge to Mr. Addiſon before Mr. Addiſon declared the court adjourned?

Mr. *Gazzam*. It was before Mr. Addiſon roſe from his ſeat, before he declared the court adjourned, and before Mr. Lucas attempted to addreſs the jury a third time.

Mr. *Dallas*. Are you an inhabitant of Pittſburg, and do you remember to have read theſe papers? (ſhewing three papers.)

Mr. *Gazzam*. I am an inhabitant of Pittſburgh, and I do not believe there has been one of "The Tree of Liberty" that I have not carefully examined, and but very few of the Pittſburg Gazette but I have read. I have no doubt but I examined each of them at the time; nay, on looking over them I am certain of it. I remember reading this paper, "The Tree of Liberty," about the 11th April, 1801. I read the Pittſburg Gazette, containing the piece headed "M'Kean's Solomons, Brackenridge and Lucas."

Mr. *Dallas*. Was Mr. Addiſon an inhabitant of Pittſburg at that time?

Mr. *Gazzam*. He was, to the beſt of my recollection.

Mr. *Addiſon*. Whether the charge I delivered in June, 1801, was a ſhort charge or a long one?

Mr. *Gazzam*. It was a ſhort one, and the beſt I ever heard judge Addiſon deliver, becauſe it was very ſhort.

Mr. *Addiſon*. What time did the court adjourn?

Mr. *Gazzam*. I can't recollect, but I remember before that to hear Mr. Lucas ſay, I have matter to deliver which you have not.

Mr. *Addiſon.* Is it uſual to ſwear a conſtable to attend a grand jury?

*Mr. Gazzam.* I cannot tell; but I have been led to believe that it is not very uſual; but ſtill I think the words were, let a conſtable be ſworn.

*Mr. Addiſon.* Is it uſual for a judge to riſe when he addreſſes a jury, and whether Mr. Lucas roſe? I aſk this queſtion merely to ſhew, that the ſame circumſtances make different impreſſions on different minds, and of conſequence the teſtimony of no one witneſs is likely to be correct as to all the facts. I do not mean to impeach the integrity of the witneſs.

*Mr. Gazzam.* To the beſt of my recollection Mr. Lucas did riſe. I do not know whether it is uſual or not.

Mr. *Addiſon.* Did he riſe in the afternoon?

*Mr. Gazzam.* It is my opinion that he did.

WILLIAM THOMPSON, ſworn.

*Mr. Dallas.* Was you at court on the 22d June, 1801, and what paſſed at the time?

Mr. *Thompſon.* On the 22d June, 1801, I was at court. After judge Addiſon's charge to the grand jury was ended, judge Lucas attempted to ſpeak—I heard him ſay, "Gentlemen of the jury." As ſoon as judge Addiſon had done, he ſaid, let a conſtable be choſen. After a ſhort converſation, Lucas attempted to addreſs the jury; judge Addiſon interrupted him in a mild way. Judge Addiſon then addreſſed the jury, and ſaid, this gentleman had ſomething to ſay, but he did not know what it was—but as far as lies in me, I will conſider this court adjourned till three o'clock. He told the jury they might go, or ſtay, as they pleaſed. Immediately after that judge Addiſon aroſe, and as he aroſe from his chair, he might take a ſtep—but it was but a ſtep. He ſaid, I conſider this court as adjourned—he went down the ſtep then, and after a few moments all that was there attending, retired.

At three o'clock, the firſt thing I ſaw was apparently a converſation between judge M'Dowell and Lucas. After a ſhort converſation, Lucas began to addreſs the jury—ſaid but a word or two till judge Addiſon told him, "Stop, Sir." After a few words judge Lucas again attempted—when he told him again in the ſame manner to be ſilent, to ſtop—if you do not, we will make you.

After that judge Lucas made a motion to judge M'Dowell, judge M'Dowell made a motion to him with his head, and judge Lucas was ſilent, and ſaid no more. A ſhort time after judge Lucas left the bench.

Mr. *Addiſon.* Was judge Lucas ſitting or ſtanding, when he attempted to addreſs the jury, and in the conſultation with M'Dowell?

Mr. *Thompſon.* It appears to me he was ſitting.

Mr. *Addiſon.* Do not the judges generally ſit when they addreſs the jury?

Mr. *Thompſon.* It has been the practice in Allegheny county —but I cannot ſay judge Lucas was ſitting all the time—but I well remember in the converſation with M'Dowell, they were both ſitting—yet I cannot ſay but Lucas, from being irritated, might ſtart from his ſeat.

*Mr. Addiſon.* Was my manner contemptuous or diſreſpectful towards Lucas?

Mr. *Thompſon.* His manner of ſpeaking is loud and diſtinct. Though I did charge him in my mind for being a little warm, it might be from a little more exertion in his manner of ſpeaking.

Mr. *Addiſon.* Did you obſerve in me a ſarcaſtic grin after Lucas had left the bench—inſulting or ſneering.

Mr. *Thompſon.* There was a ſmile throughout the counſel and bar, and bench—a pleaſant ſmile.

Mr. *Addiſon.* The Senate remember what Mr. Gazzam ſaid on this point.

WILLIAM AYRES, ſworn.

*Mr. Dallas.* Pleaſe to relate what paſſed on the 22d June in court.

Mr. *Ayres.* I was preſent on the fore part of the day, 22d June, 1801. When I went up to court, there was but two judges on the bench, Addiſon and Lucas. Judge Addiſon proceeded to addreſs the grand jury, as uſual. Soon after I went into the court-houſe. When the charge was concluded, he mentioned to the grand jury—"Chooſe a conſtable, gentlemen, to attend you." Judge Lucas obſerved, he had ſomething to ſay to the grand jury, and began, "Gentlemen of the grand jury." He held a paper in his hand, which I ſuppoſed contained the ſubſtance of what he intended to ſay to

the grand jury. Judge Addiſon turned to him and ſaid ſome thing, which I did not diſtinctly hear—he wiſhed him to wait, I think, till another judge came. Judge Lucas obſerved, that was the proper time, and he wiſhed then to addreſs the jury. Judge Addiſon replied, he would have the ſame opportunity in the after part of the day, when the court would meet, that he had then, at that ſtage of the buſineſs. Judge Addiſon ſpoke to the jury, and ſaid, this judge has ſomething to deliliver to you, which he had not communicated to me. Lucas handed the paper towards him, and ſaid, here, read. Judge Addiſon did not appear to be diſpoſed to take the paper from his hand. Lucas then ſaid, I will communicate to you, as you communicated to me, and then again addreſſed the jury. Judge Addiſon roſe, and made this obſervation: "That judge is attempting to introduce a novelty, and as to me the court may be conſidered as adjourned." Then turned to a window, took his hat, and ſaid, the court may be conſidered as adjourned till three o'clock, and the jury might ſtay or go if they thought proper.

Mr. KEAN.

Was the court adjourned with the uſual ſolemnities?

Mr. *Ayres*. No, Sir; entirely different—no proclamation as uſual, by the cryer. The uſual ſolemnities of adjourning the court were not obſerved on that occaſion.

Mr. *Dallas*. Was you preſent at any preceding interruption?

Mr. *Ayres*. I was not preſent at any other time?

Mr. MACLAY, Speaker.

What time of the day was this interruption?

Mr. *Ayres*. I think not later than one. It might be between one and two. I do not diſtinctly recollect the time of adjournment. The court met at twelve. The uſual buſineſs ſeems to occupy an hour, or an hour and an half.

*Mr. Addiſon*. From the ſize of the paper in Lucas's hand did it not appear of conſiderable length?

Mr. *Ayres*. Lucas's writing appeared to be one ſheet of paker folded; it might have been more than one.

Tarleton Bates, ſworn.

I was preſent 22d June, 1801. Preſident and Lucas compoſed the court—preſident had delivered his charge—Lucas began to addreſs the jury—the preſident told the jury, chooſe a conſtable. Lucas again began to addreſs the jury. Addiſon told

him it was an *extraordinary proceeding and unusual*: he must not do it. Lucas said, it was *his right*, and he would proceed: While the judges were conversing the jury had chosen a constable, and I believe the constable had taken his staff.

The president said, Lucas had not informed him what he intended to say to the jury. Lucas held a paper towards the president, and said, here, read—observing instantly *before* or *after*; I can't recollect, I will *communicate* to you, as you did yours to me—that is, as I deliver it to the jury. The president did not attempt to take the paper, but said, at least you will wait till afternoon, when another judge will be on the bench—and said, his right would not be *impaired* by delaying it till then: if he had a right now, he would then. Judge Lucas said, "No—now is the proper time, and I will address the jury." He began his address again. The president at the same moment went from his seat and said, "the jury if they please may stay and hear the gentleman; as to me the court may consider itself adjourned till three o'clock. He repeated again, the court may be considered as adjourned till three o'clock, and left the bench.

There was no adjournment of the court—and at past three o'clock judges Addison and Lucas were on the bench. The court was opened, although it had not been adjourned. After a few minutes judge M'Dowell came. I did not hear the conversation between Lucas and M'Dowell; but after the conversation, Lucas began again to address the jury. The president commanded him to be silent. I believe the expression was, "Silence, Sir." Judge Lucas was about proceeding again in his charge, and turned towards judge M'Dowell and said, "*the court command you to be silent, Sir.*" Judge Lucas said he would not be silent, and began again. Judge Addison informed him, that the *court would, or know how to enforce obedience.*

There was then silence on the bench, and I did not see what passed on the bench after, as my usual position is, with my back to the judges.

Judge Lucas said, prevent me from speaking, at your peril: Judge M'Dowell said, we will take upon ourselves.

I was present also 22d December, 1800. Judge Lucas, after the president's charge, attempted to address the jury, and was commanded by the president to be silent—that it was a *novel* proceeding—the president had an exclusive right to address

the grand jury. Mr. Lucas ſaid it was his equal right, and he would addreſs the jury. A conſtable had been choſen, and the jury before Lucas began to ſpeak had put themſelves in motion to leave the box. The foreman again ſat down—but as ſoon as the preſident gave it as the opinion of the court, that Mr. Lucas was not to proceed, the jury left the box.

*Mr. Dallas.* What was the nature of the charge delivered at that time?

Mr. *Bates.* It was a political charge, and a very violent political charge.

*Mr. Dallas.* What time did the court break up in June, 1801?

*Mr. Bates.* It is uſual to meet at twelve o'clock. The charge was a ſhort one; I think it was half paſt one, or little more, when the court broke up.

JOHN REDDICK, ſworn.

I was a member of the grand jury, and attended as ſuch in June term, 1801. I made a minute of the proceedings when I got home, as they appeared extraordinary.

The charge was not lengthy—it contained every thing that had been uſual from other judges on ſimilar occaſions—nothing extraneous either mixed or added. As ſoon as he had cloſed, he directed the grand jury to make choice of a conſtable to attend them. A converſation took place between Addiſon and Lucas, and while they were talking the grand jury made choice of a conſtable. Immediately after judge Addiſon turned round and ſaid, Gentlemen, Mr. Lucas wiſhes to addreſs to you ſomething about me; but he will not tell me what it is. There are but two of us, and we can't agree about it. Here it is, ſaid Lucas; you may read. Stay, Mr. Lucas, ſaid Mr. Addiſon, till the court be full. No, ſaid Lucas, now is the time, and proceeded ſo far as to ſay, Gentlemen of the grand jury. Mr. Addiſon roſe from the ſeat, ſaid, Gentlemen, I will not ſay that you ſhall not hear him; but as to me you may conſider the court adjourned. He moved a ſtep, Lucas renewed his addreſs, judge Addiſon interrupted him, ſaid, you are to conſider the court adjourned till three o'clock, and then walked away.

At three o'clock the ſame two judges were there. Judge M'Dowell came in and ſat on the right. Mr. Addiſon directed the court to be opened. Mr. Lucas leaned over and ſaid

ſomething to M'Dowell—I don't know what. Immediately after, judge Lucas, in a tone of voice more loud, ſaid, " I have a right to ſpeak to the jury, and I will do it."—and began again to ſpeak to the grand jury. Mr. Addiſon interrupted him and ſaid, What I did in the forenoon I took upon myſelf; and now there are two of us, and we will not ſuffer you to proceed. How will you hinder me, ſaid judge Lucas. We will ſhew you that, ſaid Mr. Addiſon, if you attempt to go on. Mr. Lucas made another attempt by ſaying, Gentlemen of the jury. Mr. Addiſon then addreſſed himſelf to Mr. M'Dowell, and ſaid, ſhall we direct the grand jury to their room? Certainly, replied judge M'Dowell. Mr. Addiſon then, in the name of the court, directed the grand jury to retire, which they did.

*Mr. Dallas.* Did you hear either Addiſon or M'Dowell aſk a conference with Lucas?

*Mr. Reddick.* I do not know what the converſation between Lucas and M'Dowell was.

*Mr. Dallas.* Did the grand jury expreſs or feel a deſire to hear the communication of Mr. Lucas?

*Mr. Addiſon.* That queſtion is in part proper, and in part improper. The witneſs may teſtify as to what the jury expreſſed; but he cannot as to what they felt.

*Mr. Dallas.* Was the grand jury deſirous of hearing Mr. Lucas?

*Mr. Addiſon.* My objection is the ſame as to the form of this queſtion.

The Senate hereupon took a vote whether the queſtion ſhould be put to the witneſs; and on the deciſion there were eleven members in the affirmative, and ten in the negative. So it was determined that the queſtion ſhould be aſked.

*Mr. Dallas.* Did any of the grand jury expreſs a wiſh to hear Lucas?

*Mr. Reddick.* Two of them ſpoke to me, and deſired to hear it—and after they had retired to the room, I underſtood generally they wiſhed to hear Mr. Lucas—and we ſaid pleaſantly —we ought to take the court down.

*Mr. Dallas.* Did Mr. Lucas riſe to addreſs the jury?

*Mr. Reddick.* I believe judge Lucas did not riſe at any time when he addreſſed the grand jury?

*Mr. Addiſon.* Was it intimated to the court that the grand jury deſired to hear Mr. Lucas?

*Mr. Reddick.* I believe no intimation was given to the court of a deſire to hear Mr. Lucas by the grand jury.

*Mr. M'Kean* on the part of the proſecution. We here cloſe the teſtimony.

Adjourned.

## THE SAME DAY, at 3 o'clock, P. M.

*Mr. Dallas.* The teſtimony being cloſed this forenoon, has left me no wiſh to add to it, but juſt to call the attention of the Senate to a circumſtance reſpecting the previous interruption of Mr. Lucas by the defendant; we had confined ourſelves to the interruption on the 22d of June, 1801, but the previous interruption came out in conſequence of the croſs examination by Mr. Addiſon, and then followed an account of what ſteps were taken ſubſequently. If an unfavorable impreſſion ſucceeds, he cannot be ſurprized. The attorney-general has informed you what part he took in this tranſaction, and the opinion of the ſupreme court. I called upon one of the witneſſes to prove the notoriety of that event to the citizens of the weſtern counties, ſo early as April, 1801. And I aſk the indulgence of the Senate while I read the paper containing it. I do not offer it as concluſive evidence that Mr. Addiſon knew of theſe publications, but as a fact generally known in his neighborhood.

(Here Mr. Dallas read an extract from "The Tree of Liberty," printed by John Iſrael, at Pittſburg, dated 11th April, 1801, as follows, viz.

### JUDGE ADDISON.

We lately noticed a complaint againſt judge Addiſon for miſconduct and uſurpation of illegal authority on the bench, to the injury of one of his aſſociate judges. This matter of complaint came before the ſupreme court yeſterday, in legal form; the following is an outline of the tranſaction ſo far; to the future courſe of the buſineſs we ſhall attend.

The attorney-general of the commonwealth opened the proceeding, and was heard on the motion for a rule to ſhew cauſe, why leave ſhould not be given to file an information againſt Alexander Addiſon, on the affidavit of John Lucas, ſtating that the ſaid Addiſon being preſident of the court of quarter ſeſſions in Allegheny county, on delivering a charge to the grand jury, had enjoined and enforced ſilence on his aſſociate Lucas, who had riſen and was about to addreſs himſelf in turn to the grand jury, expreſſing his diſſent from what had been delivered by the pre-

ſiding judge, and to add to ſuch matters of information and advice as might occur to him. That in order to deprive him of his right and the opportunity to deliver his ſentiments, the preſident of the court, Addiſon, with the only other aſſociate preſent, had pre-emptorily ordered a conſtable to be ſworn and the jury taken from the bar.

The attorney-general entered into a conſideration of the right of the aſſociate to deliver his ſentiments in any caſe to any jury, as equal with that of the preſiding judge on legal or conſtitutional ground. He was ſtopped at this point, by the court declaring, in the moſt unequivocal terms, any elucidation or ſupport of this principle to be unneceſſary, there being no poſſible doubt on the right: but the queſtion was, whether this conduct, however unjuſtifiable, was liable to an information? Was it indictable? If not, it could not be the ſubject of an information.

Thereupon the attorney proceeded, and undertook to maintain, that the act was indictable, inaſmuch as it was an uſurpation of unauthoriſed power, in the preſiding judge; and an abuſe of office, and as ſuch in law a miſdemeanor.

The court declared their ſtrong ſenſe of the impropriety of the conduct of the judge, but did not think it a ſubject within their cognizance. There might be a remedy in another way, but it did not lie with them to point it out.

It is no more than juſtice to the ſupreme court, to ſtate, that in the courſe of the argument and the interruption by the court, a ſtrong ſenſe was expreſſed of the indecency, unhandſomeneſs, indelicacy and unmannerly conduct of the preſident; at the ſame time conceiving that it did not amount to a crime, cognizable by indictment; but that they wiſhed it to be underſtood unequivocally as their opinion, that the right of every member of the court was equal, as to opinion; the expreſſion of that opinion in court, and that any member who ſhould, in his mind, diſſent from the reſt, would be deficient in his duty, if he did not expreſs it. We preſume that the remedy alluded to by the court was an application to the legiſlature.

The diſcuſſion produced by the above motion, has had the uſefulneſs of throwing ſome light on the conduct and character of Alexander Addiſon. One would think from the charges he has been accuſtomed to deliver, and eſpecially ſome late charges, that the whole weſtern country, inſtead of being amongſt the moſt induſtrious and happy in the Union, was up in arms and inſurrection, and that he was a viſitant for no other purpoſe but to aſſuage the torrents of bloodſhed in the conteſt!

The pacific diſpoſition of the weſtern people, has had many cauſes to be diſturbed, if ſuch a diſpoſition prevailed among them, and not a few from the ſame quarter. But their conduct and the conduct of judge Lucas is a proof of the mildneſs and temper with which they endure inſult and ſeek juſtice. Had judge Lucas inſiſted on his right, as he might juſtly have done, what might have been the conſequences among a people leſs pacific? Had the grand jury inſiſted on their right to hear judge Lucas? According to the former violence of the preſiding judge moſt probably he would have oppoſed the jury alſo—the peace might have been broken—and it is in our recollection, that he has been accuſed of breaking the peace in an outrageous manner—riot would of courſe follow, and then the judge if he eſcaped whole, would have to write another volume on the ſpirit of inſurrection, and bring his own conduct as a new evidence of the cauſes of revolution!

There appeared alſo in the Pittſburg Gazette on the 17th of the ſame month, a piece, entitled M'Kean's Solomon's, Brackenridge and Lucas; which may be conſidered as a kind of anſwer to it in favor of the opinions of the county court.

(For the Pittſburg Gazette of 17th June, 1801, printed by Mr. Scull, which Mr. Dallas read, as follows, viz.

## M'KEAN's SOLOMONS,

## *BRACKENRIDGE & LUCAS.*

In laſt week's Tree of Liberty there appeared an account of the proſecution lately attempted by John Lucas againſt judge Addiſon in the ſupreme court of Pennſylvania. This account is evidently the work of judge Brackenridge, as it is replete with falſhood and malicious invective againſt the man he ſo much envies and hates: We ſhall however offer a few remarks upon the publication as we find it.

1. It is reluctantly admitted that the ſupreme court did refuſe to receive or ſuſtain the complaint of Lucas although ſupported by his own oath, and urged with all the impreſſive eloquence of his royal highneſs the attorney-general: The court declared that they had no cognizance of ſuch a caſe: that no information would lie.

This muſt have been extremely mortifying to the infallible Brackenridge, who, it is ſaid, encouraged Lucas to come forward, aſſiſted in framing the affidavit, carried down the pa-

piers for the conſideration of the attorney-general, and boaſted when he ſat out, that he would have Addiſon broke before he returned. The people will know hereafter how to appreciate the law learning of theſe great judges, who ſo groſsly miſtook the law in a caſe of their own which they had ſo deeply conſidered. The Frenchman may be excuſed on account of his ignorance of our language and laws—indeed, we ſincerely pity poor Lucas, who has now become a ſecond time the catſpaw of his friend Brackenridge: He ſhould have been cautious in following farther the man who had puſhed him forward to the Beaver creek aſſociation; and then deſerted him and his deluded ſettlers, when the warrant holders undertook to pay him well for changing ſides.

2. The ſtatement aſſerts, "That the court expreſſed a ſtrong ſenſe of the indecency, unhandſomeneſs, indelicacy and unmannerly conduct of the preſident, although they conceived it did not amount to a crime cognizable by indictment."

Such might have been, and ſuch probably was the language of judge Brackenridge over his cups in a dram ſhop: But it is falſe, it is impoſſible, that a ſober court would thus expreſs themſelves reſpecting the acts of another court, or the preſiding judge of another court, when they had before them no teſtimony of the fact but the ex parte affidavit taken by a juſtice lately convicted of high crimes in their own circuit court. No court in a civilized country would thus deal out abuſe at random, without firſt hearing the tribunals or the party accuſed. No court doing ſo could deſerve the name of a court of juſtice; but on the other hand muſt incur and deſerve all the epithets which Brackenridge in his rage has unworthily put into their mouths againſt the county court and its preſident. We ſay the county court, becauſe the acts of the preſident in court when not diſagreed to, are the acts of the court. Never was ſeen a fouler libel upon any court, than this bold aſſertion that our ſupreme court were guilty of ſuch an outrage as to condemn and ſtigmatize with the harſheſt cenſure, another court, and other judges, without enquiring into the truth of the fact, or hearing what might be ſaid in their defence. But the author of the calumny will gain his point if knaves give currency to the tale, and fools believe it, for he has no apprehenſion that the tribunal thus ſlandered will take the trouble of calling him to account.

3. "The pacific diſpoſition of the weſtern people has had many cauſes to be diſturbed, if ſuch diſpoſition prevailed among them; and not a few from the ſame quarter. Had judge Lu-

cas inſiſted upon his right, as he might juſtly have done, what might have been the conſequences among a people leſs pacific? Had the grand jury inſiſted on their right to hear Lucas? The preſiding judge would moſt probably have oppoſed the jury alſo—the peace might have been broken."

Here is the cloven foot of Brackenridge!—a riot, a mob, a hurly-burly to inſult or to deſtroy the man whoſe virtues and talents are ſo ſuperior in public opinion to his own!!! We all remember the letter of laſt autumn, where this diabolical hint was given by the ſame man—where the ſame cowardly, vindictive temper endeavored to rouſe the people of Crawford county into fury, that he might eſpouſe and avenge the private grudge of Brackenridge. But the weſtern people know their intereſts, their duties, and their real friends too well; they have ſeen the mad Will o' the Wiſp change ſides and ſhape too often to be miſlead ſo far as to truſt his aſſurances, to believe in his ever varying creed, or to regard his enmities or invectives as an imputation againſt the fairneſs of a man's character; for it will be difficult to find an honeſt reſpectable member of the ſociety whom he does not reckon and abuſe as a decided enemy.

4. "The diſcuſſion produced on Lucas's proſecution, has had the uſefulneſs of throwing ſome light on the conduct and character of judge Addiſon."

It can have thrown none that will not be honorable and flattering to him. But it may alſo throw ſome other uſeful lights—ſuch as that Mr. Brackenridge adviſed Mr. Lucas to form an aſſociation of adventurers to ſettle on lands held by the Population and other companies under warrants, and to bind the ſettlers by writing never to compromiſe with their adverſaries, but through the agency of their prime movers. That the companies being alarmed bought off Brackenridge, who then deſerted and enliſted with the companies—Lucas was enraged—Brackenridge ſet him up as an aſſemblyman—the people diſplaced him—Brackenridge becomes accidentally a judge of the ſupreme court. By his influence with our good governor Lucas is made a judge of the county court, that juſtice may be done to his Beaver creek aſſociates, of whom governor M'Kean declared in 1798 every man ought to be indicted—Brackenridge quarrels with judge Addiſon—ſpirits up Lucas to jabber broken French and be diſorderly in court. The court ſilence him. Theſe Solomons attempt to indict the county court, or get an information filed againſt them in the ſupreme court; and are told by the ſupreme court that they are fools, there is no poſſibility of ſupporting ſuch a proceeding—Then to excuſe themſelves with

the people and their friends, a libel is written by the moon-ſtruck judge, equally abuſive of the ſupreme court and county court. And this is the true account of this very weighty matter, of which every man may eaſily judge, and judge rightly for himſelf.

(He then read "The Tree of Liberty of the 6th of June, 1801, as follows, viz.

*Supreme Court, March Term*, 1801.

Affidavit of John Lucas, an aſſociate judge of the county of Allegheny, ſtating that at a court of quarter ſeſſions of the ſaid county, after the preſiding judge (Addiſon) had delivered his charge to the grand jury; and he the ſaid Lucas was about to deliver a charge alſo, he was ſtopped by the ſaid Addiſon, and ordered to be ſilent: That the ſaid Lucas not regarding this interruption, but being about to proceed, the ſaid Addiſon with Judge M'Dowel, the only other aſſociate then on the bench, ordered a conſtable to be ſworn and the jury to be taken from the bar. Motion by the Attorney General, that he have leave to file an information againſt judge Addiſon on the ground of miſbehaviour in this inſtance. Affidavit ordered to be filed; and the Attorney General to be heard on the ſubject.

Two points made by the Attorney General,

1. That the aſſociate judge or juſtice has equal right with the preſiding judge or juſtice to charge the grand jury. This on principle, and on authorities. The Attorney was prepared with books, and began to open.

Chief juſtice Shippen: It is unneceſſary to ſpeak to this point, or to read authorities. We will not hear the right queſtioned; there can be no doubt of the right. The right of every judge is equal as to expreſſing himſelf to a jury, grand or petit; whether ſupporting or diſſenting. Nay if he diſſents in opinion, he is guilty of a breach of truſt, if he does not expreſs it. Speak to the ſecond point. Is this conduct the ſubject of an information?

By the Attorney-General. It is a miſbehaviour in office; It is a miſdemeanor. It is an indictable offence. It is an attack upon the adminiſtration of juſtice. It is a privation of right of the aſſociate to ſpeak and of the jury to hear; It is preſentable by them as a grievance. It is the ſubject of a proſecution by the judge aggrieved.

Chief juſtice Shippen. The affidavit does not ſtate malice. It would ſeem to be a miſtake of right. Unleſs a crime is ſtated the court cannot take cognizance. There may be another remedy. It does not lie with us to ſay what that is. The proceeding was arbitrary, unbecoming, unhandſome, ungentlemanly, unmannerly and improper; but there not being an imputation of wilful miſbehaviour and malice, it is not indictable, or the ſubject of an information.*

Mr. *Addiſon*. Of the novelty of this evidence there are many in the Senate capable of judging; it is alſo well known to the counſel in this caſe, that it is not ſuch evidence as would be received in any court of juſtice; they well know, and many gentlemen here alſo know, that a newſpaper report of the proceedings of a court would not be taken as a fair ſtatement of the proceedings or opinions of any court. I did not wiſh to interrupt the reading of the papers the counſel on the part of the managers had deemed neceſſary or uſeful, nor prevent the Senate from hearing any thing in ſupport of the impeachment they might chooſe to hear. I only wiſh now that it may be underſtood that the publication alluded to is not ſuch an account of the proceedings in the ſupreme court as was to be depended upon, either at that time or the preſent. There is another ſource from which the truth might be known, and from which it ought to have been known—that is, a copy of the record of the motion and of the deciſion on the motion by the court might be had, and a certificate of the opinions of the judges was alſo to be obtained. Are you, or was I to take the proceedings of the court from a newſpaper, and that too from a newſpaper printed in the houſe of a man who was the prime mover in all this buſineſs. I ſhall take another opportunity to conſider this point more at large.

With reſpect to the publication in the Pittſburg Gazette, ſuppoſed to be in anſwer to what appeared in the Tree of Liberty, I know not for what purpoſe it was read; but if I am to form an opinion I can diſcover no other motive than to inſinuate that I was privy to it. I appeal to this houſe whether this has not been the impreſſion: if it has, it is my duty to do it away. It will be obſerved that it has not been proved upon me, neither has the attempt gone beyond an inſinuation. I know my own rectitude. I would not violate my honor, my word or my conſcience. I do then declare in the preſence of the Senate, and in

* Judge Brackenridge did not take any part in the deliberation of the court, or give any opinion.

the preſence of my God, that I never ſaw that piece until I ſaw it in print. That I never had any hand either directly or indirectly in writing, publiſhing or peruſing it, until I ſaw it in Scull's Gazette.

Mr. Roſs ſaid the managers had cloſed the teſtimony on the part of the Houſe of Repreſentatives, and if Mr. Addiſon pleaſed he might proceed to make his defence.

*Mr. Addiſon.* On a proceeding ſo unuſual in Pennſylvania, and in a ſituation ſo unuſual to me; I think I may with propriety beſpeak the candor and indulgence of the Senate, and I beſeech the managers and their counſel for a liberal and candid interpretation of my conduct. And I hope it will not be underſtood, inferred or inſinuated, that when I ſpeak earneſtly and loudly, that I ſpeak paſſionately. I hope it will not be underſtood from what has paſſed or may follow, that when I ſuggeſt that this proſecution originated, not from motives of public good or public juſtice—but from perſonal reſentment and private malice. I do not mean to call down upon the members of the Houſe or their managers, any portion of cenſure. I mean it not now, nor ever ſhall. I think the members have acted according to their duty. But it will be incumbent upon me, becauſe it is neceſſary to my defence, to ſay, that the impeachment is groundleſs, that it has no foundation to ſupport it; thinking myſelf innocent can I ſay leſs? I cannot think myſelf innocent, and think at the ſame time that the Houſe acted properly in impeaching me; but that does not imply that any member acted diſhoneſtly; no, I believe they acted with candor and ſought the public good in the meaſure, but not with juſtice to me. They acted, it is true, upon the evidence, and thought they did right. I am willing to believe this.

Two articles are exhibited in this impeachment againſt me.

The firſt that after Mr. Lucas had delivered an addreſs, to a petit jury, I ſaid it had nothing to do with the queſtion before them, and they ought not to pay any attention to it. The words as laid in the impeachment have been proved. On this point therefore it will become neceſſary for me to ſhew the propriety of them, from the matter, manner and occaſion; that they were not only juſtifiable, but reſulted from a ſenſe of duty. This I ſhall endeavor to ſhew in the beſt manner I can.

The ſecond charge, that I prevented Mr. Lucas from addreſſing a grand jury in open court. The evidence has been heard, and in a certain manner it may be ſaid, the charge has been proved. It will be incumbent upon me to ſhew, that that

act was not my act, but the act of the court. It will be incumbent alſo, at leaſt it will be proper to ſhew, that in doing this the court did right; that they were purſuing a meaſure the beſt calculated to promote a due adminiſtration of juſtice, preſerve harmony, to make a proper œconomy of time, and to prevent all uſeleſs diſcuſſion and controverſy. This I will endeavor to ſhew; but firſt let me obſerve, that it might appear to the Senate, from all the teſtimony they have had, and of all the witneſſes they have examined, no two agree in the ſame words, or in ſtating the ſame circumſtances to have happened at the ſame time; ſome words are put into my mouth by one witneſs, but they are not thoſe ſtated by Mr. Lucas; for inſtance, the words ſtop me and take the riſk, is ſtated by one, Mr. Gazzam, ſaid I ſtopped him and ſaid, take the riſk—ſo again with reſpect to a conſtable to be choſen or ſworn, there is a diverſity. One ſaid the conſtable was ſworn, another ſaid and ſaid truly, that he was choſen; for no conſtable is ſworn to a grand jury.

Some put this circumſtance at the beginning, others at the end. Mr. Lucas alſo differs from himſelf; the teſtimony he has given here does not correſpond with his written depoſition, which was laid before the ſupreme court. One ſaid Mr. Lucas was ſtanding to addreſs the grand jury, and ſat down to recover himſelf from a ſhock. Another ſays he was ſitting all the time. I do not by theſe obſervations mean to impeach the candor or integrity of the witneſſes; I ſaid before and I repeat it, that among twenty perſons the beſt diſpoſed to impartiality and careful in obſervation, it would be a chance if any two of them agreed in every word and circumſtance. I ſtate theſe things merely to ſhew the Senate, that in no one diſpoſition they are likely to have the whole truth before them. They will therefore leave their minds open to receive new impreſſions from other witneſſes to be examined, and that the teſtimony on my ſide may be juſt as true as the teſtimony on the other.

With reſpect to the circumſtance of the adjournment of the court, it will be recollected, that it is not ſpecifically laid in the articles; and if not ſpecifically laid, I am not called upon to anſwer it; the counſel for the proſecution, on their honor as men, and reputation as lawyers, will not ſay that I am. They may make uſe of it to ſhew my motives, if connected with any thing elſe, which is charged. I further rely on the candor of the counſel on the part of the managers, that it will be admitted by them, that if I ſhould fail, as I truſt I ſhall not, that

I have not done an unlawful act. If the Senate ſhould be of opinion that the act was unlawful, yet it cannot be conſidered as an offence, unleſs done wilfully, knowingly and with an evil intention. Not what others may think illegal; but what I myſelf thought illegal. Perhaps they will urge ſome circumſtances as evidence of evil intention, which I may deny.

Another thing I hope will be admitted, that an indictment is not the proper method of trying a diſputed right; and there is no difference in a trial by indictment and impeachment: they are both modes of trying criminal offences. The rights of parties may be tried in a civil action, but not in a criminal action.

With reſpect to the preſent trial I will juſt add, that had it been near my evidence, I could have brought forward a thouſand witneſſes in favor of my conduct and character; but here I cannot be expected to bring down the number which would have repaired to Pittſburg to teſtify in my favor. I did indeed endeavor to procure the aſſiſtance of the public, to bring down a few; but this was denied me, and I ſhall not trouble the Senate with more than one or two. I beg John M'Dowell, Eſq. may be called.

*Mr. Roſs.* I underſtand the witneſs now called is the aſſociate judge concerned with Mr. Addiſon in preventing Mr. Lucas from exerciſing his right to addreſs the grand jury, on which account he may be deemed an exceptionable witneſs; however we do not object to his being heard.

JOHN M'DOWELL, Eſq. ſworn.

Mr. Addiſon obſerved Mr. M'Dowell was the only judge on the bench with Mr. Lucas and himſelf on the 22d June, 1801. And as to his credibility there could be no objection. Let him ſtate what took place in court on that day.

*Mr. M'Dowell.* When I came into court, in the afternoon of 22d June, 1801, I found Mr. Lucas ſitting on the bench with Mr. Addiſon. I went up the ſtairs, and took a ſeat upon his right. I alſo obſerved the grand jury in their box, which is not an uſual thing in the afternoon of Monday. Mr. Lucas leaned acroſs to ſpeak to me. Mr. Addiſon leaned back in his chair to give room, and I leaned towards Mr. Lucas. Mr. Lucas offered me a paper, folded up in octavo, which he ſaid was an addreſs he intended giving to the grand jury. I told Mr. Lucas I had no curioſity to read it; that I thought, from an incident of the ſame kind, which happened ſome time before,

that he underſtood my opinion on the ſubject, and that I had not yet altered my opinion. Mr. Lucas told me that he did not conſider himſelf bound by my opinion, or the opinion of any of the court. Lucas then attempted to addreſs the jury. Mr. Addiſon told him he muſt ſtop: the opinion of the court was, that he muſt not addreſs the jury. Mr. Lucas then leaned over to me, and aſked me if it was my determination that he ſhould not deliver a charge to the jury. My anſwer was, "Yes, undoubtedly, it is, Sir." He attempted a ſecond time to addreſs the jury. Mr. Addiſon ſpoke to me, and ſaid, "Shall we let him go on." My anſwer was, "by no means." Mr. Addiſon then told him he muſt ſtop—and aſked what means he would take to prevent him. Mr. Addiſon ſaid, "If you don't deſiſt, we will be obliged to find means to prevent you." Mr. Lucas then deſiſted, the jury withdrew, and the court proceeded to the uſual buſineſs of the afternoon.

*Mr. Addiſon.* Did you obſerve any improper or imperious conduct in me toward Mr. Lucas?

*Mr. M'Dowell.* Nor in that, or any other inſtance, either to Lucas or any other judge, or any other perſon, did I obſerve any improper or imperious conduct in Mr. Addiſon.

*Mr. Addiſon.* What paſſed between Lucas, you and I in December, 1800?

*Mr. M'Dowell.* In December, 1800, Mr. Lucas was on the bench on Monday at the opening of the court, which is always at twelve o'clock. After he had delivered his charge, Mr. Lucas alſo began to read a charge. He had read ſo far as to convince me what the tendency of the charge was. Mr. Addiſon ſtooped down and aſked me if we ſhould let him go on. I told him I thought not; it was contrary to the rules of our court, until we had a fuller court, and agreed to have our rules altered.

Mr. Lucas ſaid, his charge was not relative to the duty of a grand jury—but to the political part of the preſident's charge, and he had read ſo far as to convince me it was true.

Mr. Addiſon and I thought it beſt, as Lucas was a new judge, to aſk him to a private conference, as he was not acquainted with our rules. Mr. Addiſon ſpoke to him, and we went to a tavern in the neighborhood of the court-houſe.

Mr. Addiſon informed Lucas, that the court of Allegheny had always been very harmonious—and he went on to explain to him the practice—that is, that the preſident ſhould deliver the addreſs to the grand jury—that if he had omitted any thing,

the aſſociate might put him in mind of it, or explain himſelf to the jury himſelf. With reſpect to extra matter, that was left entirely to the preſident, and that was the rule we had laid down.

Mr. Lucas ſaid he did not conſider himſelf bound by any rule. I told him, if that was the caſe, to wait till the other judges came in, and if they agreed in opinion, that every judge might deliver his opinion, that then I had no objection; but till then he and I would not agree to it.

I have already ſaid, that in all caſes between man and man, or relating to the duties of a grand jury, no judge was ever controlled in it.

*Mr. Addiſon.* Did I ſay, I was the ſole organ of the court?

*Mr. M'Dowell.* I don't recollect that judge Addiſon ever ſaid he was the ſole organ of the court, nor did I ever make uſe of ſuch an expreſſion.

It was underſtood by the court to be the mode in which we did the buſineſs—that it was the excluſive duty of the preſident to deliver the charges. It was never diſputed till by Mr. Lucas; it has ever been our cuſtom.

Mr. *Addiſon.* Did you on this occaſion obſerve any ſarcaſtic ſneer?

Mr. *M'Dowell.* I obſerved no ſarcaſtic ſneer, either in court, bar, or bye ſtanders. They ſeemed all to behave with decency and quietneſs. If ſuch a thing had happened, I think I ſhould have ſeen it.

Mr. *Addiſon.* Did I ever endeavor to influence your judgment?

Mr. M'*Dowell.* Judge Addiſon made no attempt to influence me. If he had it would have been uſeleſs.

Lucas was informed, that if he was diſſatisfied with any thing of a general natur in the charge, he ſhould mention it to the judges themſelves, and not to ſpeak of it publicly. He was informed of this at the private conference.

Mr. *Addiſon.* Did any of the other judges find fault with what I delivered to the grand jury?

Mr. M'*Dowell.* I never heard of any of the other aſſociates, nor did I myſelf, find fault with what judge Addiſon had delivered to the grand jury.

Mr. *Addiſon.* Since Mr. Lucas objected, have I not conſtantly confined myſelf to the duties of grand juries?

Mr. M'*Dowell.* That was the laſt charge the preſident ever gave in Allegheny county, which contained any thing but the immediate duty of the grand jury.

Monday afternoon in Allegheny county court, is always appropriated to orphan court buſineſs, and it would not be poſſible to do the buſineſs that was to be done, unleſs we diſcharged the grand jury in the forenoon. We are frequently obliged to meet at eight o'clock to do that buſineſs—not to interfere with jury trials.

Mr. *Addiſon.* Was you preſent at the trial of Coulter and Moore?

Mr. M'*Dowell.* I was preſent at the trial of Coulter and Moore. It was an action of ſlander. The words were proved without a doubt. One of the evidence ſaid, he had heard one ſay, at Beaver, that he could have acceſs to a girl at Coulter's whenever he pleaſed. He was aſked if he ever told Coulter that. The man ſaid, no, he had not.

On this occaſion the preſident ſaid a good name was more precious than ſilver or gold. Lucas addreſſed the jury, and told them that if a good name was more precious than ſilver or gold, he ought to have proſecuted that man who ſaid he had acceſs to a girl when he pleaſed—and he ought to have taken care of his character if it was ſo precious, even in that inſtance. And the preſident told the jury, that was extra to what they were ſworn to try and determine. It alſo appeared, that Coulter did not know of it. They were ſworn to try between Coulter and Moore.

I thought judge Addiſon went into the points fully. I did not conceive he endeavored to influence the jury to give exemplary damages. I thought the charge a good one, and by no means partial.

I never ſaw a contemptuous behavior in Mr. Addiſon towards Lucas.

I have always thought we went fully and candidly into the evidence and law in every caſe—and I have obſerved that he always receives hints from his aſſociates, with great pleaſure. I have always found it ſo, and he always mentioned the gentlemen that requeſted him to add ſo and ſo. I have done it often when I thought there had not been ſufficient ſtreſs laid on my evidence, and he always aſked me when he ſtopped, whe-

ther I was fully satisfied. And in my opinion there is no denomination of men who could not as safely confide a cause to him as to any judge in Pennsylvania, as to integrity, honesty and law knowledge.

*Mr. Addison.* I mean to prove by this witness the signature of the judges of Allegheny county to a certificate in my hand in my favor.

Mr. *Dallas.* It is extremely unpleasant for me to take any step that may hurt the feelings of the defendant; but I am in some degree relieved from this delicacy by his conduct on this occasion. I will appeal to every one present, whether they ever heard in a court of justice such testimony admitted, does not common sense revolt at it; it must be for some popular purpose, not for a judicial one, that this extraordinary attempt is made. He will not commit himself as a lawyer and a man in contending for the admission of this kind of testimony.

*Mr. Addison.* I dare commit myself, both as a lawyer and a man, on the correctness of this point. If I did not consider the sentence proper I would not offer it. Generally speaking it is held, and generally speaking it may be true, that the rules of evidence on impeachment are the same as in the ordinary courts of justice; but this doctrine must be received here with some qualification. Was ever any thing offered to a court merely as a court, and refused to be listened to? Evidence I admit may be properly excluded from going before a jury; but no evidence is excluded from a court. A jury may be improperly impressed by improper testimony, but a court knows well what degree of weight it ought to receive and will allow it no other.

Another circumstance I shall mention; think of the distance I am from home, and the enormous expence I should be put to in bringing these witnesses down. And a third thing: these certificates were given for the purpose of being exhibited to this court. Will any man say that the signers are not liable to punishment if they have certified falsely, knowing as they did the use that was to be made of their certificates? Though it would not amount to perjury, yet it would be an attempt to divert public justice, and of course a public offence. With respect to their punishment in a future world, none can doubt of that. Thus circumstanced these certificates ought to be received and respected. Beside, they are from the most respectable people, the associate judges, justices of the peace, and gentlemen of the bar, the clergy and others of all persuasions and parties. I ask

whether theſe certificates ſhall be thus introduced, or referred to another occaſion.

Mr. *Dallas*. The defendant has no right to complain, he only ſuffers the fate any and every other perſon would be expoſed to in a ſimilar ſituation. Another might labor under more unfavorable circumſtances, if inſtead of Pittſburg he reſided in England, would he not be obliged to get his teſtimony from thence. The thing is certainly embarraſſing; but it muſt be borne with; juſtice muſt flow in equal and regular ſtreams. He complains that he could not bring his witneſſes forward at the public expence. Men much leſs able to bear the expence than I believe the defendant to be, are daily expoſed to a ſimilar inconvenience. If indeed he had brought down his witneſſes in the firſt place, and upon the trial been found innocent, juſtice might then ſtep in and reclaim him from the burthen; but this is never done in the firſt inſtance. If ſuch an application had been made to him on the bench, he would have treated it with ridicule, if not with contempt. It appears hoſtile to every proceeding in criminal tribunals. What would he have ſaid if we had exhibited certificates from the witneſſes on the part of the proſecution, inſtead of oral teſtimony. Would he not ſay, this is no conſtitutional, no legal mode of trial. I have a right to ſee my accuſers face to face, to croſs examine the witneſſes and ſearch out the truth. If we then had not the right to introduce ſuch evidence, neither can he have it. The rules of evidence are uniform and equal to all men. I venture to aſſert, that there is not an elementary writer on this point that ſupports his propoſition; the whole current of authority ſets ſtrong againſt him. He ſays there is a diſtinction between this tribunal and the ordinary courts of juſtice; that you are not a court of departments, yet you ſit here to try him upon the evidence, and no alteration can be made on that point but by a law.

I am ſorry he has propoſed to aſk ſuch a queſtion of the witneſs; but if he perſiſts I muſt requeſt that he be inſtructed to reduce it to writing, in order that the court may decide whether it ſhall or ſhall not be put.

*Mr. Addiſon*. I wave putting the queſtion, as I find it is objected to. I ſhall however expect to be allowed to read them in my defence by way of argument.

Mr. *Dallas*. It will be equally objectionable in that way.

Mr. *Addiſon*. I did expect from the candor of the gentlemen they would have permitted the Senate to have heard the teſti-

mony of ſo many reſpectable perſons, who had long known my conduct in public and private life; but ſince I have been diſappointed I will trouble the Senate no farther.

Mr. *Roſs*. The defendant was told when the buſineſs was before the managers, (and he called upon them on this ſubject) that ſuch kind of teſtimony would not be admitted.

Mr. *Addiſon* made no complaint of the conduct of the managers; but he did not underſtand what paſſed preciſely, as the gentleman had ſtated it. He thought they did not refuſe abſolutely all certificates, but would decide upon them when they had ſeen them.

I have done examining this witneſs.

CROSS EXAMINATION.

Mr. *Dallas*. Did you hear Mr. Addiſon's charge to the grand jury in June, 1801?

Mr. M'*Dowell*. I did not.

*Mr. Dallas*. Had you any knowledge at the time of the contents of the paper Mr. Lucas meant to read.

Mr. *M'Dowell*. No, he offered it to me; but I would not read it. After I had aſked him if it related to the immediate duties of the grand jury, and he anſwered me that it did not.

Mr. *Dallas*. Did you know the contents of the charge he was about to deliver in December, 1800, when he was prevented?

Mr. *M'Dowell*. No; but he read enough to convince me it did not relate to the duties of the grand jury.

Mr. *Roſs*. You ſaid that Mr. Addiſon turned round and aſked you if you approved what he had ſaid. Did he alſo aſk Mr. Lucas if he approved?

Mr. M'*Dowell*. I don't know that he did.

Mr. *Roſs*. Were the other judges of the ſame opinion as you in reſpect to the extra judicial matter he had introduced in his charge?

Mr. M'*Dowell* was about to anſwer, when

Mr. *Addiſon* oppoſed his anſwering the queſtion. He did not think the managers authoriſed to enquire of the witneſs what was the political opinions of the judges.

The queſtion waved.

Mr. *Roſs*. Are you ſubpœned on the ſtate or the defendant?

Mr. M'*Dowell*. I am not ſubpœned at all. I came forward voluntarily.

Mr. *Dallas*. Was it neceſſary according to what you ſay of the rule of the court, that the other judges ſhould agree to the extraneous matter delivered by the preſident?

Mr. M'*Dowell*. He never delivered a charge containing extraneous matter, which I heard, that I did not concur in.

Mr. *Dallas*. Did you hear the charge about the Illuminati of Germany, the Jacobins of France, emiſſaries and ſecret ſocieties?

Mr. M'*Dowell*. I did, and I perfectly concurred in it.

Mr. *Addiſon*. Did you hear of ſecret ſocieties exiſting in the weſtern country?

Mr. M'*Dowell*. I did.

Adjourned.

## WEDNESDAY, January 19, 1803.

Mr. *Addiſon* on looking over his note found that he had omitted to enquire of Mr. M'Dowell as to one or two circumſtances of ſome importance, becauſe Mr. Lucas could not recollect them; he therefore wiſhed Mr. M'Dowell to be called.

Mr. M'Dowell appeared.

Mr. *Addiſon*. Do you recollect in the caſe of Coulter againſt Moore, that in addreſſing the grand jury I did not ſay that although parents and maſters were bound to provide for the ſupport of their children and ſervants, yet they are not bound to bring actions of ſlander againſt their defamers.

Mr. M'*Dowell*. Yes, and you added that a man's not bringing an action againſt one who ſtole his horſe, would not therefore be prevented from proſecuting another for ſtealing his cow.

Mr. *Addiſon* ſaid there was a gentleman accidentally preſent. He wiſhed him to be examined. He had been counſel of the plaintiff in the caſe of Coulter vs. Moore

### David Hayes, Eſq. ſworn.

I was preſent at June term, when Mr. Addiſon appeared as uſual to deliver a charge to the grand jury.

Mr. *Addiſon.* It is not to that point I have called the witneſs. It is to relate what took place in the cauſe between Coulter and Moore in March term, and whether my conduct toward Mr. Lucas was inſulting or arbitrary.

Mr. *Hayes.* It came out on the trial, that a certain D. Whiting had ſlandered Coulter; but it did not appear that Coulter had been informed of that circumſtance. Yet Mr. Lucas ſaid that as Coulter had not brought an action of ſlander in that caſe, it ought in this caſe to go in mitigation of the damages. Mr. Addiſon then ſaid that it had nothing to do with the preſent trial, and added what has already been given in teſtimony relative to maſters and ſervants.

*Mr. Addiſon.* Had this man ſlandered Coulter particularly, or was it the ſervants he had ſlandered generally.

*Mr. Hayes.* He had ſaid that Coulter kept bad women about his houſe, and that there was a certain girl there, of whom D. Whiting had knowledge.

Mr. *Addiſon.* Did you ſee any thing contemptuous or paſſionate in my manner?

Mr. *Hayes.* I did not ſee any thing of the kind?

Here the teſtimony cloſed.

## Mr. DALLAS.

*Mr. Speaker, and*
*Gentlemen of the Senate,*

I confeſs I never roſe to diſcharge a profeſſional duty with greater regret, than on the preſent occaſion. There are recollections on my mind that render the proſecution particularly unpleaſant and inconvenient. But the general theory which I have formed, reſpecting the duties of the profeſſion; and the nature of the office, which I hold under the United States, ſeemed to have deprived me of all right of opinion, upon being honored with the call of the managers. I ſay, I riſe with regret; and that regret is encreaſed with the weight of the teſtimony that has been delivered. In ſupport of the impeachment, I have heard much more than I expected to hear: While in aid of the defence I have heard leſs than it was reaſonable to ſuppoſe. The queſtion, however, now ſubmitted to this ſenate is of the greateſt public importance; and neither in the proſecution, nor in the deciſion of that queſtion, muſt ſentiments of a private nature intermingle. It is my duty to diveſt myſelf of all perſonal feelings; and the members of the

ſenate will deem it their duty to diveſt themſelves of any feelings of reſentment, of any influence of prejudice, againſt the defendant, proceeding from an extra-judicial view of his tranſactions: So that the trial may be terminated, as it has begun, in a fair, manly and liberal manner, in relation to the proſecutors, to the defendant, and to this honorable court.

The proſecution is founded on a charge of arbitrary, tyrannical and unconſtitutional conduct, in an elevated magiſtrate. When the houſe of repreſentatives received information, that ſuch conduct had taken place; that it had excited uneaſineſs in the public mind; that it had degraded the character and office of an aſſociate judge; that it had proſtrated the peace and dignity of our tribunals; and brought into ſuſpicion the adminiſtration of juſtice; no man, except, indeed, the immediate object of proſecution, could heſitate to declare, that it was a duty incumbent upon the houſe to enquire into the facts. Whatever, therefore, have been the inſinuations of the defendant relative to the origin of the impeachment, I am ſure it is felt by all, who have liſtened to the evidence with an impartial ear, that ſuch inſinuations are groundleſs. Nothing has appeared before the ſenate, that can implicate any private perſon, or any public character, in any manner, as having maliciouſly ſet on foot this proſecution: for, without adverting to its origin, as it lies diſcloſed in the memorials and complaints of the people, upon the tables of the legiſlature. I repeat, that every man of candor, who has heard the teſtimony, muſt pronounce, that the houſe of repreſentatives would have been unmindful of their high, public truſt, if, after an inveſtigation of the facts, they had omitted to put the defendant upon his trial.

The truth of the facts charged has been acknowledged in ſubſtance by the defendant; and has indeed been incontrovertibly eſtabliſhed by the witneſſes. Thoſe witneſſes have appeared before you, with a delicacy and circumſpection of deportment, which places them far above ſuſpicion, or reproach. Even the defendant admits them to be entitled to the fulleſt confidence, and incapable of being actuated by prejudice, or malice; inſomuch, that firſt before I roſe, a witneſs was called by the defendant, who began to relate what had taken place in the early ſtage of the buſineſs; but the defendant himſelf mentioned, that he did not wiſh to amplify on thoſe points, as the teſtimony given for the proſecution, might be relied on.

Let me before I proceed immediately to the ſubject of accuſation, remind you, Sir, that on the part of the defendant,

there has been no juſt ground of complaint, though ſomething like the language of complaint has been uttered. It is true, that applications have been made by him, and rejected by you; but is it not equally true, that they would alſo have been rejected, if they had been made by any other perſon? The law knows no diſtinction of characters. If ſuch applications had been made to the court in which he preſides, I am ſure he would not have agreed to allow them. There is no hardſhip in his ſuffering, what every other citizen would have to endure, if placed in his ſituation. If this houſe declined to aid him in bringing his witneſſes, by advancing him money, the ſame would have been done, under any, and all other impeachments; in any and every proſecution of a criminal nature.

If, likewiſe, in the courſe of the trial, the learned gentleman has attempted to introduce improper teſtimony, and that has been withſtood on the part of the managers. Their conduct is not only juſtifiable, but commendable. They are bound to proceed in a manner beſt calculated to promote juſtice; and eſpecially to preſerve inviolate the fundamental rules of evidence, which form a key-ſtone in the great arch, that ſuſtains the adminiſtration of juſtice. Looſe certificates, not upon oath, preſented here, on proof of the hand writing of the ſigners only, could not with any juſtice or ſafety to the ſtate, the people, or the defendant himſelf, be admitted. If the ſigners had been here, and in preſence of the ſenate wrote whole volumes of panegyric, the manuſcript could not be received; nay, an oral panegyric delivered on this floor, could not be received, unleſs it was delivered upon oath. Let it not, therefore, go abroad, that any thing in this caſe differs from what takes place, upon principles of law and juſtice, in every caſe. And I repeat the wiſh that every prejudice ſhould give way; and that no party, or perſonal conſideration, ſhould have the ſmalleſt effect on the deciſion; but that Alexander Addiſon ſhall ſtand, or fall, by the teſt of the conſtitution, the law and the evidence.

I ſhall now proceed to endeavor to ſupport the preſent proſecution, in three points of view:

*Firſt.* That it is the right, and the duty of an aſſociate judge, to addreſs a grand jury, as well as a petit jury, upon ſubjects judicially before the court.

*Second.* That by depriving Mr. Lucas of his right, and preventing his performance of this duty, judge Addiſon has been

guilty of an illegal, unjuſt, and unconſtitutional, miſdemeanor in office.

*Third.* That for an offence of this deſcription, an impeachment is the appropriate remedy.

1. The convention that framed the preſent conſtitution of Pennſylvania, were inveſted with authority to arrange all the departments of government, to create all the neceſſary offices for diſcharging the legiſlative, executive, and judicial duties, and to beſtow on every officer that proportion of power, which was thought neceſſary for the execution of his particular truſt. When we recur to the conſtitution, we trace the diſtributive powers of the departments, and of the officers of the government. In the ſenate, for inſtance, we find a depoſitary of legiſlative authority; but all its members are equal to each other in power; and one member can no more uſurp, or annihilate the rights of another; than can the legiſlative departments uſurp or annihilate the rights of the executive, or individual departments of the government. So, as to the individual authority, the judges of the ſupreme court are each equal in power to the other, and can no more uſurp or annihilate the rights of each other, than they could uſurp or annihilate the rights of the legiſlative and executive departments.

Let us turn to the 5th article of the conſtitution.

## ARTICLE V.

Section 1. The judicial power of this commonwealth ſhall be veſted in a ſupreme court, in courts of oyer and terminer and general gaol delivery, in a court of common pleas, orphans' court, regiſter's court, and a court of quarter ſeſſions of the peace for each county, in juſtices of the peace, and in ſuch other courts as the legiſlature may from time to time, eſtabliſh.

Section 2. The judges of the ſupreme court and of the ſeveral courts of common pleas ſhall hold their offices during good behavior; But for any reaſonable cauſe, which ſhall not be ſufficient ground of impeachment, the governor may remove any of them, on the addreſs of two-thirds of each branch of the legiſlature. The judges of the ſupreme court and the preſidents of the ſeveral courts of common pleas ſhall, at ſtated times, receive, for their ſervices, an adequate compenſation to be fixed by law, which ſhall not be diminiſhed during their continuance in office; but they ſhall receive no fees or perquiſites of office, nor hold any other office of profit under this commonwealth.

Section 3. The jurisdiction of the supreme court shall extend over the state, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general gaol delivery in the several counties.

Section 4. Until it shall be otherwise directed by law, the several courts of common pleas shall be established in the following manner: The governor shall appoint, in each county, not fewer than three, nor more than four judges, who, during their continuance in office, shall reside in such county: The state shall be divided, by law, into circuits, none of which shall include more than six, nor fewer than three counties: A president shall be appointed of the courts in each circuit, who, during his continuance in office, shall reside therein: The president and judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas.

Section 5. The judges of the court of common pleas, in each county, shall, by virtue of their offices, be justices of oyer and terminer and general gaol delivery for the trial of capital and other offenders therein: Any two of the said judges, the president being one, shall be a quorum; but they shall not hold a court of oyer and terminer or general gaol delivery in any county, when the judges of the supreme court, or any of them, shall be sitting in the same county. The party accused, as well as the commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceeding, or a transcript thereof into the supreme court.

Section 6. The supreme court and the several courts of common pleas shall, beside the powers heretofore usually exercised by them, have the powers of a court of chancery so far as relates to the perpetuating of testimony, the obtaining of evidence from places not within the state, and the care of the persons and estates of those, who are *non compotes mentis*: And the legislature shall vest, in the said courts, such other powers to grant relief in equity as shall be found necessary; and may, from time to time, enlarge or diminish those powers, or vest them in such other courts as they shall judge proper for the due administration of justice.

Section 7. The judges of the court of common pleas of each county, any two of whom shall be a quorum, shall compose the court of quarter sessions of the peace, and orphans' court thereof: And the register of wills, together with the said judges, or any two of them, shall compose the register's court of each county.

Section 8. The judges of the courts of common pleas ſhall, within their reſpective counties, have the like power with the judges of the ſupreme court, to iſſue writs of certiorari to the juſtices of the peace, and to cauſe their proceedings to be brought before them, and the like right and juſtice to be done.

Section 9. The preſident of the courts, in each circuit, within ſuch circuit, and the judges of the court of common pleas, within their reſpective counties, ſhall be juſtices of the peace ſo far as relates to criminal matters.

Section 10. The governor ſhall appoint a competent number of juſtices of the peace, in ſuch convenient diſtricts, in each county, as are or ſhall be directed by law: They ſhall be commiſſioned during good behavior; but may be removed on conviction of miſdemeanor in office, or of any infamous crime, or on the addreſs of both houſes of the legiſlature.

Section 11. A regiſter's office for the probate of wills and granting letters of adminiſtration, and an office for the recording of deeds ſhall be kept in each county.

Section 12. The ſtile of all proceſs ſhall be, *The Commonwealth of Pennſylvania;* all proſecutions ſhall be carried on in the name and by the authority of the commonwealth of Pennſylvania, and conclude *Againſt the peace and dignity of the ſame.*

I lay it down as a general reſult to be deduced from this article, that the preſident and aſſociate judges of the courts of common pleas, in their powers and duties, as judges, are placed on a ſtrict footing of equality, and have equal, co-extenſive authority. This equality ariſes, indeed, not only from the conſtitution of the office, but from the very nature of the judicial character. But ſtill by the conſtitution they are made equal to the tenure of their office, or each holds it during good behavior. Do they meet as a court of common pleas? Any two of the judges, whether two aſſociates, or an aſſociate and a preſident, may conſtitute a court. Do they meet as a court of quarter ſeſſions? Again, any two conſtitute a court. In the caſe of the court of oyer and terminer, any two of the judges, the preſident being one, ſhall be a quorum: but even in this caſe, the moment the preſident and his aſſociates aſſemble, that moment all diſtinction ceaſes; and their rights and duties are conſtitutionally the ſame. In ſhort, in every inſtance while ſitting as a court, the power and duty of the preſident and aſſociate judges are placed on the ſame conſtitutional footing; and in all caſes where they act individually, theſe powers are co-extenſive, diſtinguiſhed only by the local range of juriſdiction. They

have exclusively the powers of justices of the peace in criminal matters, &c. &c.

Here then is no distinction made in the constitution between the powers of the president and associate: and if the constitution recognizes no distinction, the legislature can make no distinction; and certainly no act of the judges themselves can positively overleap the constitution and the law, to create a distinction, by bartering, or surrendering rights, which they possess for the public benefit. We must not be misled by words or names. A president does not mean a person who is to direct, influence, control and command the court; but in this, as in all public bodies, from necessity, there must be an organ to declare its sense. Thus, in the supreme court there is a chief justice; in the senate a speaker; and on the grand jury there is a foreman; they all mean the same thing, and nothing more. The presiding person is designated as a sort of certifying officer, to declare the sense of the majority of the court, the senate, or the jury. It may happen, and often does happen, that this organ is obliged to declare a result, to which he had been opposed, and of the propriety of which, at the moment of announcing it, he may not be convinced. The foreman of a grand jury is often obliged to sign a bill he voted against; and you, Mr. Speaker, have had to sign a law, which, in its progress you had unsuccessfully combated. So a president of a court, in case there are three or more judges, who concur in opinion against him, may have to deliver, as the sense of the court, opinions contrary to his own.

Nor are we to be misled on account of a distinction made in the act of assembly, for organizing our courts, by which a professional character is required to be placed as president of a court of common pleas. The president does not by this distinction acquire any additional power, nor is he raised to any greater degree of eminence. You find nothing in the constitution that prescribes, that the president shall be a legal character, though the act of assembly enjoins it; and although it might be a question, whether the legislature had the power under the constitution to place this restraint on the appointments of the executive, it has nothing to do with the present discussion. In point of convenience, however, the introduction of a law character on the bench might be well; he may unquestionably be useful; but he cannot be supposed entitled on this account to abridge the rights, or to prevent a performance of the duties of his associates, as declared in the constitution. He no doubt will have an influence on points of law,

in the minds of gentlemen, who have not made the law their ſtudy; but I truſt no one is prepared to ſay, that ſuch influence could extend to authorize the preſident to deprive his aſſociate of their equal rights and authority. That he is there as a legal character, ariſes from the accidental courſe of his purſuit of a profeſſion; but that circumſtance cannot affect the conſtitutional equality of the judges. His having read and practiſed law, cannot enlarge his rights as preſident, nor diminiſh thoſe of his aſſociates. No queſtion of law or fact can ariſe but what the aſſociate may entertain and expreſs an opinion on as well as the preſident. Nor is there in the conſtitution to be found any diſcrimination between grand, and petit juries, or between civil and criminal caſes, or to the powers and duties of the judges; but in every caſe, where the judicial office is employed, we find the powers, the rights, and duties the ſame.

This conſtitutional enquiry is neceſſary, becauſe, I think, after eſtabliſhing that the conſtitution gives equal power, and equal rights, and impoſes equal duties, on the preſident and aſſociate judges, we ſhall require ſomething more than an out-door agreement of the judges, to deſtroy this conſtitutional equality, not only as to the parties to the agreement, but as to their ſucceſſors for ever.

On this occaſion, I will quote an authority, which the defendant will accept as entitled to conſideration. It is from a volume of his own reports, to which are annexed a number of charges, many of which do him honor; and one of which he delivered in September ſeſſion, 1791, ſoon after the eſtabliſhment of the judiciary, under the preſent conſtitution, viz.

"Law is a ſcience, the right underſtanding of which requires general knowledge, much ſtudy, and cloſe reflection. Without theſe, it never can be known. And, to know it intimately, will require the labors of half a life.

"A court of law, without the knowledge of law, might, had we never known it to exiſt, have appeared to us an abſurdity too glaring, to have place in a free country. For freedom cannot ſubſiſt without law. And law, ignorantly, partially, or uncertainly adminiſtered, like every abuſed conſtitutional power, is the worſt kind of tyranny.

"In framing the preſent conſtitution of the county courts in this ſtate, both former uſage and a deſire of an improved and enlightened adminiſtration of juſtice, had an evident influence;

and thus, like a body impelled by two forces, moving in different directions, it has taken the courſe of neither, but a middle one, as nigh to each, as the force of the other would permit.

" To have compoſed theſe courts entirely of men, lawyers by profeſſion, would, unleſs ſuch judges had been few, have appeared a meaſure too expenſive. If they had been few, they might have poſſeſſed leſs confidence, or been liable to more caſualties. At all events, this arrangement might have been conſidered as too great a deviation from the former ſyſtem; and, therefore, to conſtitute even a profeſſional judge for each county, was not attempted.

" To leave the courts unaltered, was liable to ſo many objections, that no doubt could exiſt, that ſome improvement was neceſſary.

" It was eaſily agreed, that one man, by profeſſion a lawyer, ſhould be allotted to a circuit of ſeveral counties, as preſident of the courts in all. And it then became a queſtion, whether one man, not a profeſſional lawyer, in each county of the circuit, ſhould be aſſociated with him, and all be judges in every county therein, or whether three or four ſuch men ſhould be aſſociated with him in each county, as judges for that county only. The firſt method would have been the beſt. The laſt was conceived to be the moſt acceptable; and was accordingly adopted.

" Theſe judges, beſides integrity of heart, and decency of demeanor, are preſumed to poſſeſs firmneſs without obſtinacy, modeſty without flexibility, diſcretion without timidity, knowledge without conceit, and judgment without preſumption. Theſe qualities, blended with that ſkill of the law, which the preſident is ſuppoſed to have acquired, from ſtudy and practice in his profeſſion; and which the aſſociate judges are ſuppoſed to acquire, by their future attention and experience, may, it is preſumed, conſtitute a tribunal, from which the benefits of a court of juſtice may be expected, and in which the powers of a county court may be lodged.

" Theſe powers are important. Under the former conſtitution, ſome juſtices of the court of quarter ſeſſions and orphans' court were not juſtices of the court of common pleas; and ſome juſtices of the court of common pleas were not juſtices of the court of quarter ſeſſions and orphans' court. Now the preſident, and all the judges of the court of common pleas are, under that name, and by virtue of that appointment, alſo judges of the court of quarter ſeſſions and orphans' court; and,

together with the regiſter, judges of the regiſter's court, within their reſpective counties." Add. Rep. Charges, p. 2, 3.

Again the learned gentleman ſays—

"Each ſtate, whether of nature or civil ſociety, has its advantages and diſadvantages. In a ſtate of civil ſociety, courts of juſtice are neceſſary. Being not only neceſſary, but important, they ought to be made as perfect as poſſible; and to attain this degree of perfection, and enſure a regular and proper exerciſe of their powers, expence is neceſſary.

"The county courts having immediate and important influence upon our intereſts, it was thought, that every obligation and inducement ought to be laid upon the judges, to do their duty, and to do it well. And this, it was preſumed by the preſent conſtitution, would be effected, by reducing them to a ſmall and fixed number, giving them commiſſions during good behavior, and allowing them ſalaries.

"The judges now allotted to every court are not more, perhaps, than are ſuppoſed neceſſary, to enſure confidence in their deciſions. They are ſo few, that they can be eaſily, diſtinctly, and generally known, and that the abſence of any one will be inſtantly obſerved. Each of them will have reaſon to ſuppoſe, that his preſence may be neceſſary at court; and, being there, will be aſhamed to be abſent from his place. Thus every one will feel himſelf a neceſſary member of the court, and be prompted to do his duty.

"But every one will be prompted alſo to do it well. For ſeeing no other end of their commiſſions, but the end of their lives; and being no longer bound to beſtow their time and ſervice, for the benefit of the public, without a compenſation; but receiving ſalaries, to compenſate for their time and labor devoted to the community; their office becomes a calling or occupation; and, as ſuch, their particular attention to its duties is expected and required; and not immediate attention only, but a competent preparation, by ſtudy and reflection, for an intelligent diſcuſſion, and right deciſion of the queſtions which may come before them." Add. Rep. Charges, p. 6, 7.

Such is the legitimate expoſition of the ſubject, given by the learned judge at the firſt court held in his diſtrict, under the preſent conſtitution. It is expreſſed in language which every man underſtands: It ſays, what we concede, that every aſſociate judge ought to lend a willing ear, a reſpectful attention, to the opinion of the preſident, on abſtract points of law:

But it does not insinuate, that on questions of politics the like deference is due; and, in fact, a man of sense, experience, and general information, will often be better qualified to discuss and decide a political question, than one who has confined himself to mere legal study.

If, however, the doctrine, now contended for, is correct, let us ask, why the constitution contemplates the appointment of three or four associate judges in each county? Why are we encumbered with so fruitless an expence? Or, why are the associates rendered independent of the executive, in theory, to become dependent, in practice, on an inferior magistrate? If the president only is to speak on all subjects to a grand jury, where is the boundary to prevent his extending the usurpation to cases before a petit jury; or, in short, to every object of judicial enquiry? The nature of the judicial character, does not warrant the pretension, any more than the positive provisions of the constitution. The first idea of the judicial character which presents itself, is, that a judge only exists in the exercise of his own judgment. A judge cannot act by deputy, for he cannot delegate the powers of his judgment to another: He cannot, for the purposes of judgment, receive information through the eyes, ears, or understanding, of another. The very nature of the judicial character, I repeat, requires that he should see, hear, and understand for himself. He violates his trust, if he substitutes the judgment of another for his own; or even if, by his silence, he permits a jury to infer, that he is satisfied with the opinion of another, at whose opinion he revolts; nay, he is more bound to give his opinion and to assign the reasons for it, if he is dissatisfied, or even doubts, than when he concurs in the sentiments of a colleague. What sort of a judge would he be that should suffer it to be understood, that he agreed in a charge from which in fact he dissented? No man will assert, that such conduct would furnish the mind with an idea of the judicial character. Different circumstances, said the defendant, will strike the minds of different persons, in a different manner. True, it is so in the moral, and in the physical world; and, emphatically, it is true, in the science of the law, which is a department of the moral world. There is scarcely a topic of legal investigation, which does not produce contrariety of sentiment, and sometimes of decision. It is not a difference among lawyers merely; but you scarcely find an argument at any bar, that does not occasion a diversity of opinion on the bench. But this very view of the subject, leads to the conclusion, that every one ought to assign his reasons, whether he agrees or

diſſents; and we ought not to ſay to an aſſociate judge, that you may think, but you ſhall not utter your thoughts: You may form an opinion, but you ſhall not deliver it: You may ſit as a judge, but you ſhall never diſplay your own judgment, unleſs it coincides with the judgment of the majority of the bench. Alas! would this be conſiſtent with the judicial character! Further: We know from our own times, as well as from the hiſtory of antient days, that a majority of the judges, in courts of law, have been capable of delivering illegal, unconſtitutional, and even criminal opinions. On ſuch occaſions were the minority bound to ſilence? Whatever may have been the rule of the day, in the caſe of the ſhip-money, and the caſe of the ſeven biſhops, mankind have ſince conſecrated to everlaſting fame, the names of thoſe who honorably ſpurned the ſlaviſh doctrine. Let the doctrine prevail, and I ſee not why a puppet, or a China mandarin, would not form as good an aſſociate judge for the honorable preſident as a Coke or a Mansfield. A judge who may agree in ſilence, but cannot diſſent in ſpeech; who may ruminate, but dare not divulge his ſentiments; who ſhall be conſidered, in law, as a party to the judgment of the court, and yet cannot, in fact, declare that he thinks the opinion of the court, either erroneous or criminal. Surely, a preſident and men of the ſtraw, would be as competent to the buſineſs of our tribunals, as a court conſtituted of ſuch materials. But ſuch are not the materials of which our courts are, or ought to be, compoſed. The powers created by the conſtitution, the rights inherent in the judicial character, point at equality and independence among the judges. In every court, whether ſuperior or inferior, the maxim prevails, "*Inter pares non eſt poteſtas.*" Among judges ſeated by the law on the ſame bench, there is no power of coercion, or control. No judge can preſcribe to another a limitation in the exerciſe of his judicial authority; and though the opinion of a majority of the court muſt prevail, there does not exiſt a power in the majority, to prevent the minority from forming, and expreſſing an opinion. From every ſource of judicial authority, from the conſtitution, from the acts of aſſembly, from the maxims of the common law, and from daily practice and experience, the ſame, undeviating reſult is deduced. A brother juſtice cannot be bound even to his good behavior, for uſing ſuch expreſſions in court, as would authoriſe the commitment of a private perſon. But let me appeal, likewiſe, to any member of the ſenate, at all acquainted with the proceedings of courts, whether his ſenſe of decorum would not be wounded, if ſeeing a diviſion of three to two judges, upon a

a caſe before them, he ſhould hear the majority declare, that the minority might think, but ſhould not ſpeak? And what would be his indignation if this threat was added, "If you, of the minority, are not ſilent, we of the majority will ſend you to jail." But is this the extent to which the miſchief leads? May not the majority of every public body act upon the ſame principle, with equal right? And ſhall we not, in the end, encourage a uſurpation, by which all the independence of individuals, of minorities in public aſſemblies, and even of the departments of the government, may be undermined and deſtroyed? Something ſtronger than any thing that has been urged in favor of the principle, muſt be brought to its ſupport, before it will receive the ſanction of the ſenate. Carry the effect one ſtep further, and if the judges divide, two againſt two, mere manual ſtrength, or brutal force, muſt decide the judicial conflict.

On the queſtion of the equal power of the judges, as far as authority, independent of the conſtitution may be adduced, I refer to Chriſtian's notes on Blackſtone's Commentaries, to Burn. 248. 12 Coke, 118.*

I have hitherto conſidered the buſineſs of a judge, in a general point of view; and I ſuppoſe there can be no valid diſtinction, between an addreſs to a grand jury, and any other exerciſe of the judicial functions. Differences, too, have ariſen among judges of the ſame bench; but they were differences of opinion on the cauſe before the court, not differences of opinion, on the equal right of judgment. Lord Mansfield, who enlightened the juriſprudence of England far beyond any other law luminary of the laſt century, had long been accuſtomed to ſway the deciſions of the court, in which he preſided; and, finally, acquired ſuch influence over the other judges, that they ſeldom ſcrutinized, or conteſted, his opinions. Mr. juſtice Yeates, an eminent common law lawyer, differed from lord Mansfield and the other judges on two important points; and eventually Mr. Yeates's opinion was recognized to be law. What would have been the conſequence, if the aſſociate judge had not exerciſed his right? An acquieſcence in an erroneous and illegal judgment. Another conſequence enſued, it is true, but leſs miſchievous, and Mansfield was relieved from the irritation of contradiction, by exchanging judge Yeates for Mr. juſtice Blackſtone, who was a member of the court of common pleas. Again: When lord Kenyon undertook to diſturb the foundations of ſeveral of lord Mansfield's deciſions, Mr. juſtice Buller defended them boldly and ably from the attack.

* *Vide appendix, B, C, D.*

His right to do ſo, never was conteſted; but the inconvenience of the conflict, in the adminiſtration of juſtice, was ſo obvious, that Mr. juſtice Buller, alſo, was tranſlated to the bench of the common pleas. Hence, then, we ſee, that among the judges in that country, from which we derive our ſchemes of judicial policy, there exiſts a perfect equality; and not only is it the right of a judge to form opinions on the ſubjects before the court; but it is an indiſputable duty to exerciſe that right, and to deliver the reaſons upon which their opinions are founded, as well in caſes of diſſent as of aſſent.

In the commentary on Fitzharris's caſe (4 State Trials, p. 458)* by a very eminent lawyer, it is ſaid, that it is the duty of every judge to give the reaſon of his opinion, where he diſſents, and to ſtate the cauſes of his difficulty, where he doubts. Nay, a writer of great celebrity, on general principles of law, aſſerts, that it is inconſiſtent with the *oath* of a judge to be a mere cypher on the bench. (Eunomus, 3 vol. 3 Dialogue, 229. 280.)† And, yet, can a judge be any thing more than a cypher, who is doomed to ruminate in ſilence; who muſt not even appear to controvert the opinions of his brethren, nor dare, at the peril of perſonal indignity and danger, to indulge the expreſſion of his own. It is true, that the defendant alledges, and Mr. M'Dowell teſtifies, that it was underſtood, that an aſſociate judge might deliver his ſentiments to a grand jury, provided they were previouſly ſubmitted to the ſcrutiny of the court, and the utterance of them received the ſanction of the majority: In other words, you ſhall enjoy the privilege to ſupply any thing that has been omitted in the addreſs of the majority; but we will firſt decide, whether the ſupplemental matter ſhall be deemed an omiſſion: or you may proceed to correct an error, but firſt we are to judge, whether an error has been committed by ourſelves: Nay, we will permit you to deliver your ſentiments at large, if they relate to the immediate duties of a grand jury; but whether they have ſuch relation it ſhall be our preliminary province to diſcuſs and decide! Is not this a mere judicial juggle, *that*, paltring in a double ſenſe, which keeps the word of promiſe to the ear, and breaks it to the hope? To tell a magiſtrate, gravely, that he ſhall have perfect liberty to do all that a judge has a right to do; and yet to reſtrain him from the declaration of his opinion, where it differs from the opinion of the majority, is ſcarcely leſs ridiculous than the government of Trinculo, who agreed that this brother tar ſhould be their vice-roy, but inſiſted that he would be vice-roy over him. But neither the

* *Vide appendix, E.* † *Vide appendix, F.*

conſtitution, the laws, nor the practice of the courts, can be ſhewn in any way to juſtify poſitions ſo contrary to the dictates of common ſenſe, and the rights of an independent magiſtracy. The office, duty, and character of a judge, furniſh no ground to ſupport the doctrine; and, I truſt, it is ſufficiently manifeſt, that there is no diſtinction between the rights of the preſident and the aſſociate judges conſtituting the ſame court; that the difference of name creates no difference of authority; and that if the preſident could reſtrain an aſſociate judge in one caſe, he might, with equal propriety, extend his power to reſtrain him to every other poſſible caſe.

Enquiring, more particularly, however, whether there is any difference, in the authority of the ſeveral judges conſtituting the ſame court, to addreſs grand juries, (their other official powers being clearly equal) we are to look for the origin of charges to the Engliſh courts. I have not the books here to refer to; but if my recollection is correct, the practice originated with the juſtices in Eyre and Aſſize, who in the courſe of their judicial circuits and viſitations, collected a number of perſons competent to enquire into the ſtate of the country, for the purpoſe of diſcovering the offences, that had been committed, and bringing the offenders to trial and puniſhment. The ſelected inqueſt uſually aſſembled at the chambers of the judges, where the principal judge delivered to them an abſtract of the crimes and offences of which they were to enquire, compriſing nothing more than a ſhort definition of the ſeveral offences, and the puniſhments annexed to the perpetration of them. The length of the charge naturally encreaſed, with the encreaſe of offences, and the extenſion of the penal code to new objects; but ſtill it long preſerved its original character of a mere abſtract of crimes and puniſhments; and, conſequently, no opportunity could occur, on this part of a judge's duty, for a diverſity of ſentiment. From the uſeful ſimplicity of this practice, however, it has been the paſſion of modern judges greatly to depart; but in no country has the departure been more bold or pernicious, than in our own. Even in the judicial hiſtory of England, where the ſpirit of party has ſometimes raged with the moſt dreadful conſequences, you will find it difficult to trace any inſtance to countenance the political declamations, the party invectives, which have, of late, become a ſort of prelude to the commencement of every ſeſſion of our courts of juſtice. The moment the original ground was left, from that moment a new ſeries of conſequences enſued. We entered our courts, not as to a ſcene of adminiſtrative law, but to a ſcene of political ſpeculation; in

which no precise object was presented to the mind; but instead of a definition of crimes and punishments, the attention was engaged by theoretical declamations, or the feelings were exasperated by the forensic denunciations; and every mind drew different conclusions from the display, having different prejudices and opinions, to indulge. As soon, then, as discussions, foreign from the objects of the penal code were introduced, a corresponding order of things arose, in transacting the business of the judges. In every instance of a charge to a grand jury relative to their duties, it is admitted, that there is a concurrent right in the associate judge to address them; but it was said by Mr. M'Dowell, that as to all *extra matter*, it was left exclusively to the president, under a chamber agreement of three of the associate judges, and the president, to say and do as he pleased: It was determined, that he should be lord paramount; that he should have the monopoly of declaring *all extra matter* to the public, without the control, or consent, of any other of his brethren; nay, in direct oppoition to their notions of law, justice, policy, and decorum. Surely we ought to have some explanation of what is meant by this "extra matter!" for, as it stands, what does it not embrace? Whither does it lead? and who can limit its operation?

(Mr. M'Dowell, who was sitting in the house, rose up and said, "Mr. Dallas has mistaken my evidence altogether. "Extra matter;" that is not what I said.)

Mr. *Dallas*. "Extra matter" were the words. Extra matter! But though the definition has not been given by the defendant, or his witness, there are materials before us, from which to form a tolerable idea of the meaning of those who used the term. It is, then, I presume, matter delivered to a jury, with which they have nothing to do. It is matter to dissuade them from the impartial discharge of their duty, on the score of party animosity. It is matter to excite in their breasts, a spirit of persecution against their neighbors, who differ with them in political or religious opinions. It is "extra matter" to inculcate doctrines to the people, from the bench, in favor of the party, to which the presiding judge has attached himself. We will put a case (authorised by the testimony) of a political discussion, in which is brought into view that farrago of absurdity, falshood, and wickedness, that glares in the pages of Barreul and Robertson; or which is pourtrayed in the Bloody Buoy with all the filth of Porcupine; and we will suppose the presiding judge to declare, that the evil spirit which appears in those works to have destroyed Eu-

rope, has extended its baleful influence to this country, and already corrupted and diſeaſed the very heart of the body politic: If in proof of ſuch aſſertions he would refer to the legiſlative proceedings of our ſiſter ſtates, Virginia and Kentucky, and point emphatically to the reſult of our own elections; and if he ſhould lead to the concluſion, that every man, participating in thoſe reprobated acts, was an enemy to religion, good order, and civil government; an object fit for general execration, and meriting to be baniſhed from the ſocial world. I aſk, whether any judge, ſitting on the bench, hearing this wild, irrational, unfounded, and dangerous, invective, ought to be expected to paſs it over in ſilence; and, by that very ſilence, to expoſe himſelf to the ſuſpicion of approving and aſſenting? Grant this, and the effect would be dreadful! A preſident of a court of common pleas, having the excluſive right to detail all "extra matter" according to the dictates of his own taſte and paſſions, would ſoon paſs from general declamation, to perſonal denunciation; conſigning his fellow-citizens, one after another, to popular hatred and fury, as the partiſans of a faction, jacobins and illuminati; or as members of the Middle Creek Secret Aſſociation, till all ſecurity of the laws, in relation to perſons, reputation and fortunes, would be annihilated. If, at leaſt, this extenſive miſchief was not produced, followed by civil commotion and war, it would be owing more, to the mild temperament, the happy manners of our citizens, than to the conciliatory diſpoſition of the judge. But, after conſidering the effect of ſuch an addreſs, delivered with the approbation, and under the ſanction, of a majority of the court, let us contemplate the ſtill more extraordinary features of the preſent caſe. It is to be remembered, that the court of quarter ſeſſions was compoſed of Mr. Addiſon and Mr. Lucas only; and could there, on this occaſion, be given an opinion of *the court*, upon any point, about which the judges preſent diſagreed? Certainly no judicial act could be performed without the conſent of both judges. Was the charge delivered by Mr. Addiſon ſanctioned by the concurrence of Mr. Lucas? No, it never had been communicated to him, before it was delivered; and, after it was delivered, he diſapproved of it. Had not Mr. Lucas a right to expreſs his opinion, when the firſt communication was made to him? He is not chargeable with negligence; for, he offered to give his opinion of the addreſs, the firſt moment that he heard it, and if he did not approve, it was his duty to oppoſe. Say, that he agreed in the charge, ſo far as it went, but wiſhed to add to it: Could this have been denied to him? and might

he not as well proceed to correct, as to add? Still let it be conſidered, whether there is any reaſonable diſtinction between the caſe of an addreſs to the grand jury, and any other judicial act, not only in relation to the rights of the individual judges, but as to the opinion of the court, in its collective character. The reaſon applies with as much force to addreſſes to grand juries, as to any other occaſion, perhaps with more, when you conſider the extenſive enquiries it is their province to make; and from time immemorial to the preſent day, the charge has been conſidered the charge of the court, not of one of the judges. The grand juries are as much entitled to *hear* the opinions or inſtructions of an aſſociate judge, as the preſident is entitled to *ſpeak* his own opinions; and what out-door agreement, what monopoly of "extra matter," can entitle one judge of a court to deprive the grand jury of this eſſential right? Will it be permitted to the defendant to ſay, firſt, to Mr. Lucas, "you ſhall ſpeak only what I pleaſe, and when I pleaſe;" and then to the grand jury, "you ſhall hear what I pleaſe, but you ſhall hear nothing more: If I am wrong, no one ſhall ſet me right; and if I attempt to miſlead you, no perſon ſhall be at liberty to detect me, or to warn you." But, I am confident, that the ſenate are prepared to affirm the right and the duty of an aſſociate judge, to give his opinion; and no judge can ſurrender his official rights; for they are not his rights, in legal contemplation, but the rights of the public: And if Mr. Lucas had conſented to enter into the views of the other judges, in granting to the preſident the excluſive right of delivering "extra matter," without contradiction, reviſion, or control, he, alſo, would have been guilty, (as the other aſſociate judges have been, by making ſuch ſurrender) of a high miſdemeanor; for, I repeat, theſe rights were not given to him for his own advantage, to be the ſubject of barter, or of grant, but to be exerciſed by him, upon every occaſion, for the public benefit.

Permit me now to proceed, to ſhew that in depriving Mr. Lucas of the right, which he claimed, Mr. Addiſon has been guilty of a miſdemeanor in office; and with that view more particularly to analyſe the facts. The defendant may be aſſured, that neither the counſel on the part of the managers, nor the managers themſelves, have any diſpoſition to cavil about trifles, or diſtort the teſtimony. So far from ſuch a diſpoſition, that we abſtain from any endeavor (which might, however, we think, be ſucceſsful) to reconcile the trifling difference, to which judge Addiſon has alluded: ſuch as, whe-

ther Mr. Lucas was ſtanding or ſitting, when he attempted to addreſs the grand jury? or whether Mr. Addiſon had left the bench, or was upon it, when he ſaid, the court might conſider itſelf adjourned, ſo far as reſpected himſelf. No. I agree that there is nothing to impeach the credit of the witneſſes on either ſide; and taking the great outline of the facts, it may fairly be aſſerted, that there never were articles of impeachment, ſo completely, and ſo incontrovertibly ſupported by the evidence, as on the preſent occaſion.

Conſider, ſir, the firſt article. It appears, that the earlieſt effort, which Mr. Lucas made to execute the duties of his commiſſion, in addreſſing a petit jury, upon the ſubject they were trying, kindled the paſſions of the preſident, and provoked marked expreſſions of cenſure and contempt. It was the caſe of Coulter v. Moore, an action for ſlander. Mr. Addiſon's charge to the jury contained an opinion favorable to a verdict for high or exemplary damages; but Mr. Lucas, conceiving, from the evidence, ſome doubts of the plaintiff's character, expreſſed an opinion favorable to a verdict for moderate damages. The event points out the importance of an aſſociate judge being allowed the exerciſe of the right of addreſſing juries: for, the jury, on this repreſentation of the teſtimony, gave a verdict contrary to the opinion of the preſiding judge, and affirming the opinion expreſſed by the aſſociate. What however, was Mr. Addiſon's conduct? He exclaimed, when Mr. Lucas concluded his charge, in a manner warm and contemptuous: "*That* judge and I differ in opinion, and it is probable we ſhall often differ." Recollect the ſituation of the parties, their comparative reputation as lawyers, and the influence which the preſident boaſts he had acquired; and does not ſuch a ſpeech, at ſuch a time, and under ſuch circumſtances, amount to an hoſtile denunciation? Was it not tantamount to a declaration, that the aſſociates differing often from him, would be proof of the aſſociates often being in the wrong; and that he who enjoyed not the confidence of the preſident, on legal points, merited not the confidence of the public? "What (added the preſident) *that judge* has ſaid *may* be all very true, but it has nothing to do with the queſtion before you; and, therefore, you are not to pay any attention to it." Is this the language of a temperate, a wiſe and upright judge? Or is it the dogma of a judicial tyrant? Is it not, in its deſign and effect, an encroachment upon the equal rights of his aſſociate? Such is not the language held in the ſupreme court by the chief juſtice to his aſſociates, or to juries: It is the mandatory lan-

guage of the defendant alone; calculated to deter judge Lucas from executing the duties of his office. Surely, it was not neceſſary for Mr. Addiſon to make theſe remarks: the occaſion did not call for them; and he would have offered argument, inſtead of aſſertion; but that he meant to deſtroy the future influence of Mr. Lucas on the bench, and to proſtrate all his powers, by an early denunciation. Am I not authoriſed in making theſe deductions from the evidence? His words and actions betrayed a temper of determined hoſtility, declaring as it were, to his aſtoniſhed and indignant colleague—"You are ſeated, ſir, by executive authority on the bench; but this ſhall avail you little, either in your own enjoyment of the appointment, or in the public uſe to be derived from it. Already I make you feel my pre-eminence; and, at every call for your opinion, I will diſgrace the preſent efforts, and repudiate all the future." That Mr. Lucas was deprived, by a cruel uſurpation, of the public confidence, and even weakened in the juſt confidence which he might repoſe in himſelf: the due courſe of juſtice was interrupted; and by a neceſſary conſequence, the conſtitution and the law of the ſtate, were ſo far ſubverted.

But, whatever may be thought of the accuſation, in that point of view, there can be no difficulty in conſidering Mr. Addiſon's conduct on the 28th of March, as evidence of the deportment which he intended to obſerve towards Mr. Lucas, in all their official relations; and it will well ſerve to diſcloſe the motives, that actuated him on the preceding 22d of June. I proceed, therefore, to examine the ſecond article of impeachment.

The article now under conſideration, preſents two points for diſcuſſion: the firſt is, that Mr. Addiſon uſurped an authority, not veſted in him by the conſtitution or the law. The ſecond is, that he ſtopped, threatened, and prevented Mr. Lucas from diſcharging a public duty. The facts of the caſe, while he acted on his ſingle authority in the morning, or when he acted jointly with Mr. M'Dowel in the afternoon, prove the whole of the charge; but the occurrences of the morning are ſufficient for every purpoſe of the impeachment, except that no direct threats were then uttered. Nay, I ſhould be willing, were it requiſite, to reſt the cauſe upon the tranſaction of the morning, when Mr. Addiſon and Mr. Lucas only, conſtituted the court; and before he had the ſanction of Mr. M'Dowel; for, it is obvious, that the giſt of the charge was at that period conſummated.

A ſcene of greater art, or bolder tyranny, has never occurred in any court of juſtice, ſince the days of *Jefferies*. I am bold in making the aſſertion; for I am confident that the reſearch of the ſenate will not find a parallel: And, yet, it might be ſaid of Jefferies, as I believe ſome are diſpoſed to ſay for the defendant, that on queſtions of property, or in caſes of mere private altercation, Jefferies was an able, and an honeſt judge. It was only when Jefferies was inſtigated by the ſpirit of party, or prompted by the influence of the crown, that he became a tyrant, and the curſe of the Britiſh courts of juſtice. The inſtruments on the preſent occaſion were firſt artful perſuaſion, then terror, and finally menaces. Let us go on, ſtep by ſtep; and if the impreſſion has been made on the minds of the ſenate, as it has been made upon my mind, they will agree in the fidelity of the portrait, which it is my duty to exhibit, without exaggeration, I grant, but alſo, without flattery. The court conſiſted of Mr. Addiſon and Mr. Lucas only, after Mr. M'Dowel had left the bench on the morning of 22d June, which he did before Mr. Addiſon's addreſs to the grand jury was commenced. It will be here obſerved, that Mr. Lucas' preſence gave form and body to the court, and the addreſs ought to be conſidered an act of the court. Yet no communication was made by Mr. Addiſon to Mr. Lucas of the topics, on which he meant to addreſs the grand jury; of courſe Mr. Lucas could give no aſſent to the act; and without his expreſs aſſent, or his ſilence implying aſſent, it could not be conſidered as an act of the court: for, I preſume, it is ſufficiently ſhewn, that, when there are but two judges on the bench, they muſt agree in opinion, before any opinion can be alleged to be given by the court.

This was the ſituation when Mr. Addiſon had cloſed his charge to the jury. Mr. Lucas then made an attempt to addreſs the ſame jury; but he was ſtopped, and perſuaſion was uſed to prevent him from going on. He, then, ſtated that it was his right to proceed; and that he was determined to exerciſe the right, becauſe he ſuppoſed it alſo at that time to be his duty. Mr. Addiſon mentioned to the jury, that Mr. Lucas had not informed him what he intended to ſay, and inſtantly Mr. Lucas offered Mr. Addiſon the peruſal of a paper he had in his hand. This manifeſted a diſpoſition to do what Mr. Addiſon had not done to him; and he might have read it, if he had chooſe to do ſo, with a view to diſplay the candor which he has told us he poſſeſſes. This however was not his conduct, he contented himſelf with requeſting Mr. Lucas to wait until the

afternoon, ſaying that the right would not be impaired by ſuſpending its exerciſe till then; or, if he had the right now, he would equally have it then. When Mr. Lucas preſſed again to addreſs the jury, Mr. Addiſon ſaid, "the jury, if they pleaſe, may ſtay and hear the gentleman, but as to me, the court may conſider itſelf adjourned." Thus, we diſcover that by fair means, or by foul, he was determined to accompliſh his object; the ſtep which he took put an end to the adminiſtration of juſtice; and our country was aſtoniſhed to behold a court broken up by the diſorderly conduct of the preſiding judge; all the uſual ſolemnities of an adjournment laid aſide; and the bench, the bar, the jury and the audience, retiring in confuſion and diſmay.

The irregular and abrupt breaking up of the court, I do not, however, mean to preſs as a ſubſtantive charge of miſdemeanor, upon which Mr. Addiſon is to be found guilty by the ſenate, as it is not directly laid in the articles of impeachment; but the incident is fairly and forcibly applied to prove, that Mr. Lucas was ſtopped and prevented, by means the moſt indecorous and lawleſs, from exerciſing his official right. The ſcene, I repeat, exhibited an aſſociate judge degraded; a court of juſtice expoſed to ridicule and contempt; the adminiſtration of juſtice obſtructed; the right of the grand jury infringed; and the duty of the great inqueſt of the county ſuperſeded; by the arbitrary, intemperate and diſorderly conduct of the preſiding judge! What emotions does the review of ſuch tranſactions, even at this day, excite in every mind, that feels for the honor of Pennſylvania? Think, then, what muſt have been the ſenſations excited in thoſe who were preſent at the period of humiliation! But independent of the manner, let us reflect, whether the preſiding judge had a color of authority to diſſolve the court, in this abrupt and irregular manner. Was the adjournment pronounced by him, an adjournment in contemplation of law? No, ſir: he knows it was not; he knows it could not be a legal adjournment. The ſame power is neceſſary to adjourn a court, that is neceſſary to form it. If by the law two judges are required to conſtitute a court; the court, being once in ſeſſion, cannot be adjourned without their joint aſſent. The preſiding judge, in ſuch a caſe, might by violence, or by feceſſion, annihilate the court, but he alone never could adjourn it: And mark the legal conſequence! The court being diſſolved without an adjournment, could not reſume its functions till the next ſtated term, or ſeſſions; and every act done, every trial, and every judg-

ment, on the ſame, or any preceding day, was *coram non judice*, illegal and void. 2 Bac. abr.

This country never before witneſſed ſo extraordinary, ſo diſgraceful, a ſcene. If Mr. Addiſon, exerting his perſonal proweſs and phyſical ſtrength, had choſen to ſtrike Mr. Lucas from the bench, inſtead of retiring himſelf, Mr. Lucas might have ſuffered greater inconvenience, but the law would only have ſuſtained an equal outrage. Whether Mr. Lucas was knocked down, or ſent to jail, or Mr. Addiſon deſerted his poſt, the effect, in the exiſting ſtate of things, would be the ſame; a diſſolution, not an adjournment, of the court. Then let us caſt an eye towards the evidence and the defence, to cite, if we can, a glimpſe of ſomething to extenuate, or excuſe, ſuch conduct: for, juſtification can no longer be pretended. Will it be thought an excuſe, that Mr. Addiſon did not know the contents of the paper, which Mr. Lucas meant to read? Certainly not; for he might have read it, if he pleaſed, or if he wiſhed to ſpare the degradation of the court. Would the delivery of the addreſs, have impeded the buſineſs of the court? It would not have conſumed the time loſt by the altercation; and certainly could not have been ſo inconvenient on the queſtion of diſpatch as an adjournment. Will the out-door agreement of the preſident and ſome of the aſſociate judges excuſe him? In all matters of agreement, the perſons muſt have a legitimate power to agree; and the ſubject of the agreement muſt be a lawful one; the agreement is nugatory and void: but *inter pares non eſt poteſtas;* a majority of the judges could not diſrobe the minority of any part of their judicial character; nor could an unanimous concurrence juſtify the ſurrender of any individual right, which each judge holds in truſt for the benefit of ſociety.

Let us again put a caſe, hypothetically. Suppoſe the preſident and three aſſociate judges being of the ſame political party, make an agreement, that the preſident ſhall deliver all "extra matter" to a grand jury; and in purſuance of this agreement, he eulogizes one party, at the expence of the other: Shall a judge, belonging to that other party, be doomed to ſit in ſilent anguiſh, while he, his friends, and his copatriots are viliſied and traduced, without juſt cauſe? Muſt he liſten patiently to the commendation of meaſures, which he condemns, and to the arraignment of motives which he approves? In ſhort, muſt he exhibit, from time to time, the culprit, and not the judge, upon the bench; while the political charges of the preſident, acting uniformly and conſtantly on the public

mind, like drops of water continually falling on the same spot, work a deep impression; or like the influence of a stone upon the smooth surface of a lake, extending circle beyond circle from the jury and auditors to their families, their neighbors, and their distant acquaintances, until the whole community is affected by the political tendencies of the judicial politician.

It is said by Lord *Bacon*, that the best law is that, which leaves the least liberty to the judge; and he is the best judge who takes the least liberty to himself. True, in the present instance, the law left no liberty to the judge to address grand juries on points foreign to their ends of their institution; but it is equally true, that the judge assumed more power, than was ever contemplated to be given to a court, much less to an individual magistrate.

I have explored the ground, to find if practicable, an excuse for the conduct of Mr. Addison. I can find none: And the learned judge will not, I presume, pretend that he did not know of the application to the supreme court, and the result of it.

Mr. Addison said he knew nothing of the result but what was printed in the newspaper; and the doctrine there stated, not being founded according to his judgment, he conceived it to be an erroneous report:

Mr. Dallas allowed him full credit for what he stated.

Adjourned.

## THURSDAY, January 20, 1803.

Mr. *Dallas*. The attention observed by the senate, in the examination of the present cause, shews its importance; and must prove highly satisfactory to the public mind, as it gives a well grounded assurance, that, whatever may be the decision, it will comport with justice. To me the appearance of this attention has been peculiarly gratifying; because, if I have erred in any statement of facts, or if I have drawn any unwarranted inferences from the evidence, the members are prepared to correct, and refute, the unintentional departure from the just standard of investigation. I stated yesterday, that the attempt of judge Lucas to address the grand jury was founded on a constitutional right; and that in case of disagreement with his brethren, it involved a duty, which he was bound to perform. I endeavored to establish this general proposition from the constitution of the office, and the nature of the judicial character. I then proceeded to shew, (and I trust I did

it to the ſatisfaction of the ſenate) that this conſtitutional right and duty were co-extenſive, and that each, and every judge, on the ſame bench, was equally poſſeſſed of the right, and equally bound to diſcharge the duty. The conſtitution made no deſcrimination; and, therefore, none could exiſt: for the legiſlature had no power to legiſlate, reſpecting a conſtitutionally defined and veſted right; and if the legiſlature could not interfere, much leſs could a ſubordinate department; and ſtill leſs could the equal members of the ſame tribunal, lawfully undertake to barter and deſtroy each others rights. The action in the morning of the 22d of June, was the action of the defendant alone, and without color or excuſe; and even the action of the afternoon, which is referred to the authority of the court, loſes all foundation, when that authority is brought to a conſtitutional teſt.

On the behavior of Mr. Addiſon to Mr. Lucas, upon the 28th March, in the caſe of Coulter v. Moore, if the teſtimony made the ſame impreſſion on the minds of the ſenate, that it made on my mind, it will not be neceſſary to dilate. The deſign and operation cannot be miſtaken. Mr. Lucas had ſcarcely taken his ſeat on the bench, and opened his commiſſion, when he was denounced by the preſident. Such conduct carried with it ſentiments of perſonal hoſtility: The words imply it, independent of the manner of ſpeaking, and the deportment of the defendant. Mr. Lucas had given no cauſe of offence; he had done no official act as a judge: How then are we to account for the attack? We muſt look for it in the ſpirit of party, which divided the community; we muſt trace it back to ſomething that had occurred before Mr. Lucas' appointment. We know, that not only that part of the ſtate, but in every diſtrict of the United States, parties have long run high; almoſt in equilibrium with point of numbers; and diſtinguiſhed by aſſumed denominations, or by nick names, which they have given to each other. Theſe gentlemen had taken different ſides in the political warfare; and the preſident, ſo far from acting in a ſpirit of conciliation, declared open hoſtilities againſt his aſſociate from the firſt moment of their entering the ſame judicial field; and, fighting under the banner of party, he attempts to overpower Mr. Lucas by the auxiliary of the out-door agreement, idly called a rule of court. From the commencement to the cloſe of the tranſaction, whether Mr. Addiſon was alone with Mr. Lucas, as in the morning; or whether he was ſupported by Mr. M'Dowell, as in the afternoon; ſtill this fell and deadly ſpirit of party, which never ought to

intermingle with judicial proceedings, (and which I fervently implore may not influence the ſenate on the preſent occaſion) raged with indecent and unrelenting fury.

(Mr. Addiſon was unwilling to interrupt Mr. Dallas; but, if he did not, he might proceed in his argument, upon a miſtaken fact. The teſtimony of Mr. M'Dowell ſtated, that the agreement, authoriſing the preſident to deliver excluſively the charges to grand juries was made ſo far back as 1791, when it could not have any relation to party ſpirit: the other judges were Wallace, Wilkins, jun. and Gibſon.)

Mr. *Dallas*. This interruption, I aſſure the gentleman, can have no effect, either upon my temper, or my argument. I did not ſay the agreement was formed for the caſe of Mr. Lucas; but that it was applied to his caſe, in order to prevent a contradiction of political principles, which the preſident indulged in his party charges.

When I was proceeding yeſterday on the ſubject of the ſecond article of the impeachment, I avowed that I was willing to reſt the cauſe upon what took place in the morning; for, the delinquency of Mr. A. was conſummate, at the breaking up of the court: but I will not repeat the detail, further than to remind the ſenate, that from the firſt opening of judge Lucas' lips, to the final prevention, there was a ſyſtematic oppoſition to his addreſſing the grand jury, Mr. Addiſon conſtantly aſſerting his right to the excluſive privilege of delivering the charge. In the morning the language, and even the geſture of perſuaſion was employed; but that effort proving ineffectual, and the defendant aware that one judge could not control the other, while there were but two judges upon the bench, he ſought ſimply, but artfully, a poſtponement till the afternoon, aſſuring Mr. Lucas, that if he had the right to addreſs the jury, it would be unimpaired, and uneffected, by the delay. If you analyſe the teſtimony, you will find that this humor of condeſcenſion and perſuaſion, paſſed off with the neceſſity of the morning ſcene. In the afternoon, when the preſident found himſelf in a ſituation to coerce, he no longer depended upon the effects of mildneſs, or politeneſs. It will be recollected, too, that among other arts to gain his object, the defendant had recourſe to complaint, telling the jury, that Mr. Lucas would not communicate what he wiſhed to ſay to them; yet it will, alſo, be recollected, that when Mr. Addiſon was offered the paper containing Mr. Lucas' obſervations, he did not then take it; and that Mr. M'Dowel declined reading it upon a ſimilar offer in the afternoon.

Having alluded to the charges in this general way, I had next explored the ground of defence, and if poſſible to conjecture an excuſe, for the enormous outrage of breaking up, in tumult and diſorder, a court of juſtice. I gathered from the queſtions put to the witneſſes, that the defendant meant to inſinuate, that he reſiſted Mr. Lucas' exerciſe of his right, in order to ſave time; but the reading of Mr. Lucas' remarks would not have occupied many minutes; it certainly would bear no proportion to the expence of time and treaſure, which might reſult to the court and ſuitors, from the diſgraceful expedient, to which he had reſorted.

Another pretence has been ſuggeſted as an excuſe; ignorance of the contents of the paper, and ignorance of the law, on the right of Mr. Lucas. "I am not, ſays the learned judge, to be charged and puniſhed, unleſs it is proved, that I have committed an offence, that I knew the act to be an offence, and committed it with an evil intention." Lawyers are accuſtomed to hear, that ignorance of the law is no excuſe. even in a common farmer who has never opened a law book, What ſhall we ſay of a preſiding judge, emphatically a legal character, and claiming to be the excluſive organ of the court in which he preſides, ſetting up the plea of ignorance as a juſtification for ſuch an outrage? Of what was he ignorant? of the fundamental laws of the ſtate! of the proviſions of the conſtitution! Is it conceivable, that he who was a member of the convention that formed the conſtitution; who heard all the cotemporaneous expoſitions and animadverſions of his fellow-members, ſhould be thus ignorant of the terms and fair interpretation of the inſtrument? others may be at a loſs to know the law; but ſurely this gentleman, who had aſſiſted in framing the plan, by which the aſſociate judge was made the equal of the preſident, cannot be allowed the plea of ignorance. It is impoſſible that he can ſo far impoſe upon himſelf, as to receive into his mind a conviction, that he did not calculate exactly the quantum of power belonging to every judge on the bench. The ſenate have, indeed, heard the defendant's own argument on this point, in the year 1791, ſo different from his preſent defence. Yet, let us ſuppoſe, that he was not informed as to the equal rights of the judges of the ſame court, will he declare, that he was ignorant of the law, which prohibits a judge from a riotous and diſorderly diſſolution of a court of juſtice? Is there a gentleman, ſo unlettered in legal learning? Is there a child, who has acquired the firſt rudiments of education, as not to know, that when two judges are neceſſary to compoſe a court, the conſent of

both is neceſſary to the adjournment, and that it is not in the power of one of them to declare all proceedings ſuſpended. This knowledge does not require legal erudition; it requires only common ſenſe.

Is it poſſible, that a plea of ignorance can reach this complicated caſe, in which the law of decorum is as groſsly violated, as the law of the land? Still, however, I mean not to deprive the defendant of any advantage, which he can claim, from the omiſſion, to introduce all his irregular and diſorderly conduct, into the form of the accuſation; and I uſe it only as evidence of his motives and his manners, in relation to the offences actually charged.

But, let us imagine, that the plea of ignorance may be reaſonably allowed, as to the firſt interruption of Mr. Lucas, in March term 1800, can any latitude of charity, or indulgence, extend it to the interruption in the June term following? The judge who had ſuffered the interruption in March, appealed to the laws of his country; but the ſupreme court, conceiving, that as the acts of Mr. Addiſon were done as a judge, in court, they had no power to try or puniſh, refuſed to grant an information againſt him. What, however, paſſed on the occaſion was notorious to every man in the country; and although we ought not to affirm, in particular, that Mr. Addiſon had notice of the proceedings in the ſupreme court, as the fact is not in evidence, a ſenſe of character will not permit him to deny it. The opinion of the ſupreme court, on the equal rights and duties of the judges, conſtituting the ſame court, is ſtated in the Tree of Liberty of the 11th April, 1800; and although I am willing to admit (nay, it is the ſtrength of one part of my argument) that a judge is to act upon his own judgment, and is not bound by the judgment of another, however ſuperior in ſtation, learning, or experience; yet, the plea of ignorance, on a legal queſtion, is repelled the moment we find the defendant had a fair opportunity of aſcertaining the law, by the authoritative expoſition of the higheſt judicial tribunal of the ſtate.

The defendant ſays, and he ſays truly, that an indictment is not the proper way to try a right; but, ſir, we are not trying a right, we are trying an offence. The right which we contend for is the right of the aſſociate judge to think, and to ſpeak. If his ideas were as crude, enthuſiaſtic, and malignant, or his ſtatements as falſe and exaggerated, as any that we find in the writings of Barreul and Robinſon, it would be as much his right to deliver them, as it was the right of the preſiding judge, to utter the effuſions of a party ſpirit, againſt

the illuminati, the jacobins, the democrats, and the legislatures of Virginia and Kentucky: Nor could the right of judge Addison to interrupt mr. Lucas, be traced to a better, or more legitimate source, than the right of Mr. Lucas to correct the errors and misrepresentations of the president.

Many of the arguments employed in the defence, lead to a field of discussion, that must be the field of the defendant's defeat. Thus, when we contend for the right of Mr. Lucas, he refers us to another course to establish it,—to some unspecified form of civil process: Yet, when he claimed the right to prevent Mr. Lucas from addressing the grand jury, did he think either of an information, or of any civil action, to decide the controversy? No, sir, he took the law into his own hands, and decided by his own act, in favor of his own pretensions; and having done this wrong, he makes it the basis of his defence, declaring, in effect, that although the offence was flagrant, and complete on his part, yet, the manner of committing it, ensured him perfect impunity, since the right must be established by civil process; and criminal process could not be instituted for mere ignorance of the law?

Here, then, let me ask, the assent of the senate to the allegation, which introduced this part of the subject, that Mr. Addison's conduct, on the morning of the 22d June, consummated the offence, with which he is charged in the second article of the impeachment. Is it not obvious, that although he did not then resort to words of menace or to physical force; yet, that there was a moral force employed, as effectual, to deprive Mr. Lucas of his right, as if he had committed him to prison, or as if he had knocked him down? Even, therefore, if the case rested here, the senate would no doubt decide, that the second article of the impeachment is fully and fairly substantiated: But, it will be my duty to proceed, and to shew, from the accumulation of outrage upon outrage, the monstrous extent to which the defendant's passions have misled him. At this stage of the discussion, however, the senate will pause, to reflect upon the scene that has been exhibited: And, if they perceive the powers of the court usurped by a single judge; the rights of an associate judge annihilated; the administration of justice interrupted and disgraced; and the constitutional distribution of authority set at naught;—they will deplore the fatality, which has precipitated the defendant into such enormities; they will inflict upon the offender an exemplary punishment, and restore peace and order to the administration of justice.

Something has been intimated, to shew that there were indications of personal malice, in Mr. Addison's first denunciation of Mr. Lucas; but, I will grant, that the petty jarrings of individuals, the heats and jealousies of private life, that constitute a cause for impeachment. Whatever personal malice rankled in Mr. Addison's heart towards Mr. Lucas, however it might operate to disturb the harmony of social intercourse, it could not engage the attention of this tribunal, unless it assumed an official form, and was directed into channels injurious to the public interests. Not private malice, but public malice; not personal ill-will, but official delinquency; are the subjects of impeachment: but public malice (if I may so speak) is implied in official delinquency; as individual malice is implied in the very act of homicide. Thus, is the official deportment of Mr. Addison towards Mr. Lucas, from the moment he was publicly denounced, to the last period of his degradation, by threatening to send him to jail, we collect the indications of a haughty mind, regardless of the obligations of the law, and fatally bent upon his own aggrandizement, at the expence of official right, decency, and duty. Whatever, therefore, of personality was in the motive, the mischief of the act was public, and carries with it the legal imputation of malice.

We will not go into a detailed examination of Mr. Addison's charges to grand juries; but, it is evident, that, in the best of them, he largely indulged himself in speculative points. In those instances, however, let us be satisfied, in reflecting, that if he did no good, he did no harm; except, indeed, by a waste of that public time, of which he was so parsimonious, when a brother judge wished to share a part. Yet, if the system of Mr. Addison's charges was to elevate one set of citizens, and to depress another, fair play required, that both sides of the question should be heard; and in relation to the "extra matter," or political portions, of his judicial lectures, it was unjust and dishonorable to deny to Mr. Lucas, for himself and his friends, the opportunity of vindication and reply. If Mr. Addison enjoyed a superior degree of learning, and a more extensive sphere of influence, his delinquency was proportionally greater in the abuse of his official trust, to disseminate party politics, and to excite domestic animosity. Nay, the topics of the president's charges were often treason against the vital principle of our government. A representative republic must languish and expire, if the source of its life and duration, the right of election, shall be poisoned, or cut off, or brought into contempt. When, therefore, the presiding judge inveigh-

ed againſt the iſſue of the general elections, as ſymptoms of popular corruption, he attempted in effect to undermine the confidence and attachment of the citizens, in the republican inſtitution which they had eſtabliſhed; and, as far as in him lay, ſought to ſubvert, what he had ſworn to ſupport. When ſuch an attempt is made by an alluſion to the influence of the illuminati, jacobins, democrats, and ſecret ſocieties, upon our elections, he ought to be corrected, and the manner in which Mr. Lucas attempted to correct him was certainly not too ſevere for the occaſion. We have heretofore heard the toſin of alarm ſounded; tales of plots and conſpiracies have been anxiouſly fabricated and circulated by "the friends of order and good government;" and our women and children have been terrified with the impending horrors of taylors, tubs, clues! Nay, the very letters of the alphabet have been marſhalled againſt the peace of the community; and X, Y, and Z, were, for a while, the ſymbols of corruption and outrage, of foreign hoſtility, and domeſtic diſcord. But theſe bubbles have vaniſhed into air, "thin air;" the maſk has been torn from the face of the impoſtor, and the triumphs of the republicans has produced nothing which patriotiſm, or humanity, can deprecate, or deplore. But if the ſtate of Pennſylvania deſerved to be denounced by Mr. Addiſon, for the reſult of the elections of 1799, which only gave a majority of 5000 votes, in oppoſition to his wiſhes, what muſt be the degree of depravity and degradation, to which her citizens have ſince ſunk, when we find that the majority in 1802, has ſwelled to the unprecedented amount of 30,000!

But, to reſume the conſideration of Mr. Addiſon's conduct in the preſent tranſaction. Soothed by his arts, and aſſailed by his violence, it redounds to the honor of Mr. Lucas, as a public officer, that he contended for an official right, with ſo much ſteadineſs, at the hazard of every perſonal accommodation. Nor is he more to be honored for the manner, in which he claimed the right of ſpeaking, than for the matter, which he intended to deliver. The draft of his addreſs lies before me. Conſider what had been ſaid to the grand juries by Mr. Addiſon, on political and party topics, and no man can heſitate to pronounce, that the obſervations, propoſed to be made by Mr. Lucas, were judicious, relevant, temperate, and conciliatory. Permit me, ſir, to read them to the ſenate; and, as the defendant has intimated, that he apprehended a conſumption of time, from the addreſs, injurious to the more important buſineſs of the court, I pray you to mark the period,

that will be occupied in a deliberate peruſal of the contents, in order to decide upon the weight of that objection.

(Mr. Dallas read the charge from the Tree of Liberty, which Mr. Lucas, on the croſs examination of Mr. Addiſon, had teſtified to be the one he intended to communicate. See the appendix, marked G.)

Is there, I repeat, a man, who has heard this paper read, unwilling to acknowledge, that it is replete with good ſenſe, liberality, and candor; and that it was proper to go to the grand jury, after what had been delivered from the bench by the preſident? The poiſon was virulent: is the antidote too ſtrong? How, too, do we find ſo great a length in the peruſal, as to juſtify a public altercation between two judges, the ſuſpenſion of the public buſineſs, and a diſorderly diſſolution of the court, merely to avoid a loſs of time? The paper has been read in leſs than ten minutes; and, ſurely, theſe few minutes would have been well employed, if not for the ſake of the obſervations themſelves, at leaſt for the ſake of preſerving harmony, order, and decorum, in the court. But the obſervations themſelves, form an honorable contraſt with the political effuſions of the defendant. They contain no language of inſult, reproach, or retaliation. There is no diſplay of an intolerant and vindictive party ſpirit. The very occaſion for interfering is lamented; the interference appears to be compelled by a moral neceſſity, not to be purſued to indulge a pertenacious diſpoſition; nor was it an action to make a new impreſſion on the minds of the jury, but a counter-action, to remove an evil impreſſion previouſly made. It would have been highly advantageous to the public, that ſo much good ſenſe and honeſt truth ſhould be oppoſed to plagiariſms from Barruel and Robinſon, or phantoms raiſed by the zeal of a party politician. It was ſaid by Mr. M'Dowel, in the courſe of his teſtimony, that he had heard ſo much in Mr. Lucas's overture to addreſs the grand jury, as to convince him, that the addreſs had no relation to the duties of the office. Let us appeal to every intelligent and candid auditor to decide, whether Mr. Lucas's addreſs was not, in fact, more relevant to the duties of the grand jury, than the charge of Mr. Addiſon. In the former, much is well ſaid, to allay the heats of prejudice and party, and to enſure an impartial and faithful diſcharge of the truſt confided to the inqueſt. In the latter (of which Mr. M'Dowel cordially approved) every inſtrument of terror and invective was employed, to throw the mind off its bias, and to excite emotions of hatred and perſecution. But, it muſt ſtill be remembered, that the neceſſity of

Mr. Lucas's communication was produced by the nature of Mr. Addiſon's charge: And whatever it was lawful for Mr. Addiſon to do, in order to make the impreſſion, which he deemed proper; it was lawful for Mr. Lucas to do, under the influence of a different opinion, to avert the pernicious conſequences of that impreſſion. The anſwers of the defendant, indeed, to this claim of equal right, are as verſatile, as they are arbitrary. At one time it is denied, becauſe he muſt not offer any comment, on what has been ſaid by the preſident, who alone is to touch upon *extra matter*. At another time, ſilence is impoſed, becauſe it is conjectured (for, both Mr. Addiſon and Mr. M'Dowel declined the opportunity of aſcertaining the fact) that the communication does not relate to the immediate duties of the grand jury. Thus, between the privilege of the preſident, and the functions of the jury, the rights of the aſſociate judge were put in abeyance; with a diſpoſition and dexterity, not unlike thoſe diſplayed by the tyrant, who, to regulate the ſtature of his ſubjects by one ſtandard, commanded that all who were too ſhort ſhould be ſtretched, and all who were too long, ſhould be lopped.

If on this examination of the evidence, a doubt could remain of the delinquency of Mr. Addiſon, on the morning of the 22d of June, *that doubt* muſt, inevitably, be diſpelled, by adverting to the confeſſion of Mr. Addiſon himſelf. Mark the words: "*I took upon myſelf the riſque of ſtopping you in the morning; and I am ready to anſwer for the conſequences.*" Out of his own mouth do we thus condemn him. In this declaration, "that he had run a riſque," we fix his conſciouſneſs, that he had tranſgreſſed the limits of his authority; and the conſequences, which he was ready to encounter, could only be the conſequences of a complaint and impeachment. If a judge acts, in court, fairly and honeſtly, though erroneouſly, he incurs no riſque; he can have no conſequences to dread: it muſt be a wilful, intentional, and unlawful act, amounting to a miſdemeanor, to involve him in any riſque. Either, therefore, in the matter, or in the manner of the proceeding, the defendant knew, that his official conduct had placed him in a ſtate of reſponſibility and danger. The tenure of his commiſſion left no room for apprehenſion, from the diſpleaſure of the executive department. The behavior of a judge, ſitting and acting in court as a judge, is not a ſubject for animadverſion in the ordinary courts of juſtice. And, hence, it neceſſarily follows, that, even at the moment of tranſgreſſion, he contemplated the conſequence of be-

ing ſummoned to anſwer for the offence, before this, the only competent tribunal.

Proceeding to the afternoon, it muſt be remarked, that much has been anticipated, which more particularly belonged to this ſtage of the tranſaction; nor, can I ever regard the occurrences of the afternoon, as conſtituting the offence, but only as aggravating its enormity. The acquieſence of Mr. M'Dowel in Mr. Addiſon's opinion, againſt the right of Mr. Lucas to addreſs the grand jury, does not leſſon the offence of Mr. Addiſon, though it may criminate Mr. M'Dowel. It is not the fiat of one judge, nor of a majority of the judges, that can annihilate the official right of any individual member of the bench, as appears from the authority cited yeſterday. (2 *Bac. ab. p.* 97 of the laſt edition.)

I agree, that the majority decide for the whole; but I contend that they do not think for the whole. I agree, that the preſiding judge is the proper organ of the court, to expreſs the opinion of the court; but, I contend, that every member of the court is the proper organ to expreſs his own opinion. How ſtands the caſe in the legiſlature; where, by the bye, it would, at leaſt, be as inconvenient for every one to ſpeak, as it would be for every member of a court of juſtice to detail the reaſons of his opinion. On this point, you regulate the debate, but you do not deſtroy the equal right of ſpeech. No man can ſpeak more than twice on the ſame queſtion, without leave; but every man may do as much. The ſpeaker, it is true, announces the deciſion of the houſe; but every member who chooſes, may previouſly declare his own ſentiments. What, however, would be the feelings and conduct of your conſtituents, if acting on the principles of Mr. Addiſon's rule of court, a majority ſhould inveſt the ſpeaker with an incluſive right of diſcuſſing any topic; or ſhould impoſe perpetual ſilence upon the minority? Again: The powers of the chief juſtice are, I preſume, as extenſive as the powers of the preſident of the court of common pleas of Allegheny county; and the power of a majority of the bench of the ſupreme court, cannot be inferior to the power of a majority of the bench of the common pleas. Say, that the chief juſtice were to aſſert a claim to addreſs a grand jury, excluſively, either on his own aſſumption, or on the grant of a majority of his brethren, what would be the ſenſation excited? It is true, that the judges of the ſupreme court are all legal characters; but this ſtate of things makes no difference between the courts, on conſtitutional ground; for, the circumſtance of the preſient's

being the only legal character on the bench of the common pleas may, and, perhaps ought, in practice, to give him ſuperior influence; but it confers no ſuperiority of power, or right, over the aſſociates.

With this preliminary ſtatement, to obviate the idea, that the union of Mr. Addiſon and Mr. M'Dowell could more affect the official rights of Mr. Lucas, than the ſingle authority of Mr. Addiſon, let us analyſe the facts of the afternoon. It appears that the court was then opened, although it had not been cloſed in the morning. And I remarked, yeſterday, that this irregularity terminated the ſeſſion, and that all the buſineſs done afterwards, was illegally done. As ſoon as Mr. Addiſon and Mr. Lucas were ſeated, the latter, confident in his rights, propoſed to ſend for Mr. M'Dowell, who, accordingly, attended. With deference and politeneſs, in a manner perſuaſive and conciliatory, Mr. Lucas communicated to Mr. M'Dowell what had paſſed in the morning, and offered for his peruſal the addreſs, which he wiſhed to deliver to the grand jury. But the ſcene was changed. The mild and perſuaſive accents, which the preſident had aſſumed in the morning, were no longer heard. The motive, which produced them, had ceaſed. Mr. Lucas' attendance was not then eſſential to conſtitute a court; and, inſtead of taking upon himſelf a perſonal riſk, the preſident could cloak himſelf with the name and ſanction of the court. No mutuality of reſpect, or good-will, was manifeſted towards Mr. Lucas. No overture was made to recognize, or conſider, in any form, or degree, his claim of right, though Mr. Addiſon had intimated that it would ſtand as firmly in the afternoon, as in the morning. The manner and language of the preſident, became bold, boiſterous, and peremptory. His *will* had been the law of the morning: his *will* was equally the law of the afternoon. *Stat pro ratione voluntas.*

I have reached that ſtage of the diſcuſſion, which calls for ſome caution, to prevent a departure from the moderation, that I have preſcribed to myſelf. We have ſeen a judge degraded, and a court violently diſſolved; but, it remained, to ſtimulate an honeſt indignation, that a magiſtrate's functions, duties, and rights, ſhould be ſuperſeded and annihilated, under the terrors of a threat, delivered in open court, by his brethren of the bench! The lumber of our profeſſional libraries contains, we know, much abſurdity; but this affords no ground for reflection upon the law itſelf; which is a ſyſtem of refined common ſenſe, adapted to the various conditions, ſitu-

ations, and purſuits, of mankind. Thus, the difference of time and place, makes often, in law and reaſon, an eſſential difference in the delinquency and puniſhment of an offenſive act. The giving the lie, in a ſtreet, or a tavern, is a breach of good manners, and generally terminates in a perſonal rencontre; yet, it is not an offence in the law: but if the ſame indecorous expreſſion is pronounced, within the precincts of a court of juſtice, its conſequences are highly penal. A blow given in the highway, is a mere miſdemeanor; but if given in Weſtminſter-hall, it has been regarded as a ſpecies of treaſon. Let us apply the principle of this determination to the preſent caſe. If a private citizen, in a private room, were to threaten a judge, for any part of his conduct in court, ſuch a threat all will agree, would be greatly reprehenſible; and, yet, how venial it is, when compared with the fact, that one judge has threatened another judge, ſitting on the ſame bench, in open court, for an attempt to exerciſe, what is now an acknowledged, judicial right! State the defence of Mr. Addiſon, as involving a propoſition, that two judges of the court, may lawfully commit the third judge to priſon, for attempting to expreſs an opinion, on any ſubject before the court, and what mind can yield its aſſent? Then, where is the diſtinction, between the actual commitment, which removes the judge from the bench, and the menace of the commitment, which awes him into ſilence, while he remains there? Hardly would it appear a greater outrage to me, if inſtead of ſending the judge to jail, or threatening to ſend him thither, the preſident had boldly ſtruck him from his ſeat.

It is true, ſir, that the terms of the threat uttered by Mr. Addiſon, were not expreſsly, that he would ſend Mr. Lucas to jail; but this was its natural and neceſſary import. The witneſſes uſe different words, but they concur in ſubſtance, that Mr. Addiſon ordered judge Lucas to be ſilent, and declared, that, if he did not deſiſt from the attempt to ſpeak, the court would find means to make him. What are the coercive inſtruments of a court, in any inſtance of a contempt of its authority? Fine and impriſonment. It would be a pitiful ſubterfuge to ſay, that the preſident intended merely to direct the grand jury to withdraw; for, he might, with equal effect, have done ſo in the morning; and, certainly, if nothing more was intended, he might then have given the direction at once, without the addition of the threat. The pride, if not the candor, of the defendant, will prevent his reſorting to ſo palpable an evaſion. Nor, will it anſwer his

purpoſe to allege, that he meant to coerce Mr. Lucas by the impoſition of a fine only, would be as unlawful, as a commitment to priſon; and the means would not be ſuited to the end; ſince a fine might operate as a puniſhment for ſpeaking, but could not operate as a gag to make him hold his tongue. The commitment to jail, therefore, was the threat: Such was the interpretation of the words, in the mind of judge Lucas; and the effect, upon his conduct, was in perfect correſpondence with it. He ſunk, mortified, dejected, and confuſed, upon his ſeat. He pauſed for a moment's reflection and ſelf-collection. He trembled at the diſgraceful and injurious conflict, which muſt inevitably enſue, if he longer aſſerted his rights. He ſaw his character and uſefulneſs, as a judge, completely deſtroyed. With ſhame and affliction he retired from the court: And the bench and the bar, the jury and the auditors, united in a laugh of triumph, a ſarcaſtic ſmile, "in which (ſays Mr. Gazzam) I was ſorry to obſerve, the preſident take a conſpicuous part."

Here we have attained the ſummit of the charge, and look down, with aſtoniſhment and diſguſt, at the ſcene, through which it has been neceſſary to paſs. As it reſpects the public, the principles of the conſtitution, the proviſions of the law, and the maxims of juſtice and decorum, have been violated. As it reſpects the injured individual, the treatment has been tyrannical, oppreſſive, arbitrary, and cruel. If ſuch conduct does not conſtitute a high miſdemeanor in office, I am at a loſs for any rational definition of official delinquency. Conſider, ſir, not only the actual outrage, that has been committed, but the conſequences of the precedent, ſanctioned by an acquittal of the defendant. The complaints of Mr. Lucas, the memorials of the indignant inhabitants of the weſtern counties, however juſt, and however animated, are of little moment, compared with the influence of this day's proceedings, upon the future adminiſtration of juſtice. Declare that the defendant is not guilty, and you announce to the world, and to poſterity, that, on the principles of our government, an aſſociate judge is a cypher on the bench, with the power to think, but without the right to ſpeak, that a majority of the judges of any court, may form agreements, or rules, to annihilate the functions, and privileges, of the minority; that the preſident may claim and enjoy a monopoly of opinion and diſcuſſion, on whatever he ſhall pleaſe to call *extraneous topics*, in open court; and that he may enforce that monopoly by every poſſible art, or violence; by a diſorderly diſſolution

of the court, by menaces of perſonal indignity, or by the arbitrary impriſonment of an aſſociate judge. Are the ſenate prepared to authoriſe ſuch inferences from their deciſion, upon the preſent occaſion? No: We appeal not to their paſſions, or their prejudices; but, relying implicitly upon their wiſdom, impartiality, and independence, we aſk for juſtice to their country, to poſterity, and to themſelves. The houſe of repreſentatives have faithfully diſcharged their duty, in exhibiting the articles of impeachment: It remains, for the ſenate, to ſet an important example to every grade of public officers, warning them againſt the uſurpation of unconſtitutional powers, or the perpetration of arbitrary and oppreſſive acts. And the force of the leſſon will not be diminiſhed, when it is found, that the conſtitutional independence of the judicial office, affords no hope of impunity, in the caſe of a magiſtrate, who ſhall wilfully abuſe his public truſt.

3. The third propoſition, to which the attention of the ſenate is now to be directed, affirms, that for the miſdemeanor committed by Mr. Addiſon, an impeachment is the appropriate courſe of proceeding.

The firſt principle of our conſtitution eſtabliſhes the great departments of governments, legiſlative, executive and judicial, upon diſtinct and ſeparate foundations; and the operation of that principle, has, naturally, introduced the exiſting modification of the power of impeachment. In England (whence we derive our general notions of politics and law,) the attributes of the executive are of ſo indefinite, ſo paramount a character, and the influence of the ariſtocratical, or privileged orders is ſo expenſive, that to reſcue the nation from great delinquents, enjoying the favor of the crown, or the immunities of hereditary rank, it was eſſential that the policy of impeachment, ſhould extend to every ſubject, every offence, and every puniſhment. But here the limited and definite authority of the executive, and the equal rights of the people, preſent no occaſion to apprehend a ſimilar evil; every public officer is as reſponſible, as any private citizen, to the ordinary proceſs of the penal law; and, conſequently, the conſtitutional organization of the departments of the government only requires, that the power of impeachment ſhould apply to public officers, for official offences, by an immediate removal and perpetual diſqualification. To preſerve the executive power of appointment and removal, from the encroachments of the judicial department, it is proper to reſtrain the ordinary tribunals of juſtice, from affecting, in any degree, the tenure of office, by a judicial ſentence. To pre-

ſerve the independence of the judicial department, both with relation to the legiſlative and executive departments, it is proper to confer upon the judges a commiſſion during good behavior. But, leſt the commonwealth ſhould ſuffer, either from the favoritiſm of the executive, in retaining a civil officer, whom he might diſmiſs; or from the miſconduct of a judicial officer, whom he cannot remove; this high ſuperintending, and impartial, tribunal is happily inſtituted. Through the medium of this court, a ſalutary check is impoſed upon the general authority of the executive department, in the buſineſs of appointments; and a qualification is affixed to the independence of the judges, calculated rather to advance, than to obſtruct, the policy, which ordains the peculiar tenure of their commiſſions.

The third ſection of the fourth article of the conſtitution, provides, that "the governor, and all other civil officers, under "this commonwealth, ſhall be liable to impeachment, for *any* "*miſdemeanor in office.*" The ſubject of impeachment is *any* miſdemeanor in office. The proviſion, therefore, comprehends every offence, within the indefinite claſſification of a miſdemeanor, whether of the loweſt, or of the higheſt degree, in the ſcale of delinquency; and it embraces, equally, thoſe caſes of official miſconduct, which may, alſo, be proſecuted by indictment, or information, and thoſe caſes, which are only cognizable in a courſe of impeachment. For inſtance, every ſpecies of direct corruption committed by a judge, whether off, or on the bench, would furniſh occaſion for an indictment to puniſh the offence, as well as for an impeachment to remove the offender: But, for the arbitrary deportment, the oppreſſive conduct of a magiſtrate in court, acting as a judge (it has been already ſhewn) the ordinary tribunals can afford no redreſs. The juridical hiſtory exhibits a great variety of both of theſe deſcriptions of offences. Lord *Bacon*, who has been well characteriſed by the moral poet, as "the greateſt, meaneſt, of mankind," is a memorable example of the baſe and ſordid corruption of money. Yet, covetouſneſs is not ſo dangerous a vice in a judge, as ambition, or party ſpirit. A bribe proves the turpitude of the man, who gives, or who accepts, it; but its taint ſeldom extends further; while the ambition and party zeal of a judge, not only incapacitate him, for the diſcharge of his duties, but are active in diſturbing the repoſe, and harmony of ſociety. With all the moral defection of lord Bacon and lord Macclesfield, they never did, nor could produce ſo much private diſorder, and ſo much public wrong, as the judicial aberrations of the aſpiring party-heated, Treſilian, Jeffries and Scroggs. In

the lectures of Mr. Wooddeſon, you will find the only ſyſtematic eſſay on the law of parliamentary impeachments; 2 *Wooddes.* 596 and *Comyn's Digeſt* furniſhes a catalogue of the principal caſes that have occurred: *Tit. parliament letter L.* But let me particularly point the attention of the ſenate, to the impeachment of lord C. J. Scroggs, as reported in the ſtate trials. 3 *vol.* 218. 7 *vol.* 223. At a period of great party conteſt, when Popiſh plots were as much the bug-bear of religious factions, as the affiliations of the illuminati, jacobins and democrats have ſince been of our political factions; the non-conformity of the duke of York, the preſumptive heir to the crown, & a great body of catholic nobility, had raiſed a hue and cry, throughout the kingdom. Lord C. J. Scroggs heard, that the grand jury intended to preſent the illuſtrious offenders; and, in order to avert the preſentment, he diſmiſſed the jury arbitrarily and abruptly, before they had compleated the buſineſs of the ſeſſions. In the impeachment of the chief juſtice, this act was charged as an illegal, arbitrary, and high miſdemeanor, a violation of his oath, and the means to ſubvert the fundamental laws of the land. There was in that inſtance, no more imputation of a ſordid corruption, than in the preſent inſtance: but there was in that caſe leſs of an arbitrary and illegal interpoſition to impede the courſe of law and juſtice; for, not only did Mr. Addiſon arbitrarily diſmiſs a grand jury, but he alſo drove a judge from the bench, and of his mere will and pleaſure, or rather paſſion, and diſſolved a court of juſtice. But as the chief juſtice Scroggs, and Mr. Addiſon, both, acted as judges in court, the ordinary tribunals could not arraign, or puniſh, their miſconduct; and the proceſs of impeachment was indiſpenſable to the purpoſes of juſtice. 2 *Bac. abr.* 97.

Let it, however, be ſuppoſed that ſuch miſdemeanors could be proſecuted and puniſhed at common law, it would ſtill be expedient to inſtitute the preſent impeachment. A judge, who is capable of acting, in a manner ſo inconſiſtent with his duty, and ſo injurious to the public intereſts, manifeſts to every department of the government his unfitneſs for his ſtation, and each department of the government is bound to contribute, with all its authority, to his removal: but a delinquent judge can only be certainly removed by a legiſlative impeachment. Again: It is only by a ſentence on the impeachment, that the people can be ſecured from the re-appointment of the delinquent judge; ſince, in no other way, can perpetual diſqualification be inflicted.

Here, indeed, it may be proper to notice another conſtitutional proviſion, which, it has been ſometimes thought, would

afford a competent redreſs, for the preſent grievance. The ſecond ſection of the fifth article declares, that the judges of the ſupreme court, and of the ſeveral courts of common pleas, "for any reaſonable cauſe, which ſhall not be ſufficient ground of impeachment, may be removed by the governor, on the addreſs of two thirds of each branch of the legiſlature." Independent of many reaſonable cauſes for removal, which would call for compaſſion, inſtead of puniſhment, as old age, accidental incapacity, &c. to which this proviſion particularly applies; it is to be conſidered that before that courſe is purſued, it muſt be decided, that ſuch conduct as Mr. Addiſon's, is not a ſufficient cauſe for impeachment. If it is deemed a ſufficient cauſe for impeachment, the legiſlature cannot adopt the alternative of an addreſs to the governor. It is not aſſerted, that the langurge of the conſtitution is mandatory; ſo that every miſdemeanor in office *muſt* be purſued by impeachment; and there are, doubtleſs, many ſlight miſdemeanors, which would not juſtify a form of inveſtigation and animadverſion, ſo ſolemn, and ſo expenſive. But the conſtitution ſimply declares, that every civil officer, for every miſdemeanor in office, ſhall be liable to an impeachment; leaving it to the diſcretion of the houſe of repreſentatives, to diſcriminate between the caſes proper for impeachment, and the caſes that require only an addreſs: between thoſe caſes, in which they will exerciſe their own abſolute power, and thoſe on which they will appeal to the power of the executive, who may, or may not, acquieſce in the application. Beſides, therefore, the conſiderations, that have been already urged, the ſenate muſt perceive, that the alternative of an addreſs ceaſed to exiſt, and the preſent trial became the appropriate and excluſive courſe of proceeding, the moment the houſe of repreſentatives decided (and how could they otherwiſe decide) that Mr. Addiſon's miſconduct in office, was ſufficient ground of impeachment.

One word, ſir, upon the nature and extent of the puniſhment, which you are authoriſed to inflict, if the defendant ſhall be convicted. It is declared, that "judgment, in caſes of impeachment, ſhall not extend further than removal from office, and diſqualification to hold any office of honor, truſt, or profit, under this commonwealth." The terms of this proviſion obviouſly amount to a limitation, and not to a grant, of power. If there had been no reſtrictive clauſe, the ſenate might have inflicted the higheſt pains and penalties, the whole extent of the common law puniſhment, upon an offender; and the ſubſequent proviſion, that "the party, whether convicted,

or acquitted, upon impeachment, ſhall nevertheleſs be liable to indictment, trial, judgment, and puniſhment, according to law," would be a direct recognition of a right, to puniſh a man twice, for the ſame offence. But the negative words imply an affirmative, that although you cannot go beyond, you will not go to the extent, of your authority. It is true, that the expreſſion connects, by the copulative " and," the removal from office, with the diſqualification to hold any office; but the expreſſion is governed and explained, by the motive in uſing it, which was merely to deſignate *the extreme* of the ſentence to be pronounced on a conviction; and the diſjunctive " or," could not have been there ſubſtituted, upon any principle of grammar, or common ſenſe. It is, with ſome variance of phraſeology, nothing more, than the ordinary clauſe in a penal ſtatute; which empowers the court to impoſe a fine, not exceeding a ſpecific ſum, or to order an impriſonment, not exceeding a limited period, beyond which the court cannot puniſh, but certainly they are not bound to puniſh ſo far.

Every principle of juſtice is in uniſon with this conſtruction. An impeachment lies for any, and for every, miſdemeanor in office: but there is a vaſt difference in their degrees of guilt; and it would confound all our ideas of diſtributive juſtice, to ſay, that there ſhould be no apportionment of puniſhment, to the heinouſneſs of the crime; in a caſe, too, where the attribute of mercy cannot operate, as in the ordinary caſes of puniſhment. Beſides, ſome actions may prove a man to be unfit for a particular office, and yet by no means prove a general diſqualification for the public ſervice. For inſtance, an ambitious and tyrannical diſpoſition, will make a bad judge; but might not be incompatible with the command of a garriſon; and it would be indiſcreet to diſqualify ſuch a judge, from hereafter accepting a commiſſion in the army.

It appears, then, ſir, that the ſenate poſſeſs a diſcretion to apportion the puniſhment (as far as they can puniſh) to the degree of the offence; and may if they pleaſe modify their ſentence, either to a ſimple removal, or to a removal and a diſqualification from holding any judicial office, under this commonwealth. But even if no ſuch exerciſe of diſcretion were permitted, the ſeverity of the puniſhment cannot be a reaſon, for affording impunity to the offence. The ſenate, acting in their ſtation of high reſponſibility, muſt decide upon the conſtitution, the law, and the evidence, whether Mr. Addiſon has been guilt

ty of a misdemeanor in office, without regard to the consequences of the decision. *Fiat justitia, ruat cælum!*

That this honorable court will do justice between the state and the defendant, is the expectation and the wish of every candid and generous mind. For my own part, I hope that I have said nothing, which does not naturally belong to the cause; and I pray that every thing that I have said, may be applied as a commentary upon the charges and the proofs, and not as a personal attack upon the fame, or the fortunes, of Mr. Addison. Nay, sir, I will conclude (gratefully impressed with the patience and attention of the senate,) under this solemn assurance, that an acquittal would be infinitely more pleasing to my feelings, than a conviction, if you, his honorable and upright judges, can contemplate, in that acquittal, a vindication of the violated honor of the commonwealth.

[*Here Mr. Dallas concluded: Mr. Addison requested till the next day to prepare himself to proceed in his defence, which was granted, and he delivered himself as follows.*]

## *NOTE.*

*The public are reſpectfully informed, that in order to expedite this work, it became neceſſary to divide it: that that part of the work, beginning with Mr. Addiſon's defence, p.* 101, *was ſet up at the ſame time as the teſtimony, apprehending, from a view of the matter, that the paging would correſpond; but as the preceding part of the work exceeded the calculation, it has occaſioned ſeveral pages to be doubled, or twice numbered; which has rendered this explanation neceſſary; but does not render the work leſs perfect.*

*Mr. Speaker, and*

*Gentlemen of the Senate,*

IT is now towards twelve years, ſince I was appointed Preſident of the courts of Common Pleas of the Fifth Circuit of the ſtate of Pennſylvania. This appointment, though, when firſt ſuggeſted, altogether unlooked for by me, I accepted with chearfulneſs: becauſe I thought it accorded with the wiſhes of the gentlemen of the bar, and of the people in general; and becauſe I thought I was not altogether deſtitute of capacity, and knew I poſſeſſed a very zealous diſpoſition, to be uſeful in it. In none of theſe motives have I any diſappointment to regret. The favourable opinion, indulgently entertained of me, experience has ripened into a confidence. In a mixed ſociety, of characters of all deſcriptions, purſuit of univerſal approbation is fruitleſs and ineffectual as the chace of the rainbow. I have limited my ambition to the approbation of the wiſe and the good; and, in this, I humbly hope, I have not been unſucceſsful. I have endeavoured to be, what every magiſtrate ought to be, "for the puniſhment of evil doers, and for the praiſe of them that do well"; and viewing popularity as but a ſecondary object, and, when acquired, as it too often is, by unworthy means, a contemptible object; I have laboured to be uſeful. For five years and till a new county, no part of which was within its original juriſdiction, was annexed to the Fifth Circuit, I never was abſent from any court, a ſingle day, nor a ſingle hour in any day. I omitted no pains to qualify myſelf for a uſeful diſcharge of the duties of my office; and I have diſcharged them without any regard to favour or reſentment. Every one who knows any thing of the confuſion, in which the buſineſs of the County Courts was, while thoſe Courts were held by Juſtices of the peace, (and I blame not them; for how could it be otherwiſe?) of the great delay and growing accumulation of ſuits; muſt know, that, to reduce this confuſion to order, and to bring in a ſyſtem, at the ſame time, correct and expeditious, was no eaſy taſk. In the counties of the Fifth Circuit, at the weſtern extremity of the ſtate, leſs improved by the example of the Judges of the ſupreme Court, the evil muſt have been greater, and the correction more difficult. But there I take upon me to ſay this evil has been as completely corrected as in any other part of the ſtate. That I may have often erred, is not only poſſible, but natural; for it is the lot of man. But I humbly preſume it is believed, that, in no Court of Pennſylvania, has buſineſs been conducted with more regularity and diſpatch, or deciſions been

more satisfactory, than in the Courts of the Fifth Circuit. A gentleman, of whose praise even a proud man may be vain, handed me the following note "During the twelve years of your presidency there has been no Bill of Exceptions, no Writ of Error on a Demurrer or case put upon the record; no second Ejectment except in two instances, (one of which has been affirmed and the other not yet tried;) though on an average more than forty Ejectments are tried every year. Perhaps this evidence of confidence in the opinions of the Court cannot be found in any other part of Pennsylvania, of the United States, or of any other country. It speaks louder than any other encomium; because it will not be denied that at the Bar we have men capable, independent and willing to appeal and try another tribunal, if they believed that success would follow the appeal."

Without asserting that this statement is altogether correct, I may fairly rely on it as the opinion of a man, than whom no man is better acquainted with the business of the law in the Fifth Circuit or generally. If, in speaking thus of myself, I shall be thought to "have become a fool in boasting," I can say with St. Paul, I have been compelled to it,

Honestly entertaining these sentiments, which I am now obliged frankly to avow, of my official conduct; and, after a careful review, solemnly declaring, that I can see nothing in it worthy of blame; nothing, which, on deliberation, I would not again do; I cannot but look with astonishment at my present situation, standing as an offender at the bar of this Senate, and having my name published to the world as that of one guilty of a misdemeanor in an important public office. In a situation so unpleasant, as to a man of any sensibility this must be, I find consolation in looking over this paper, containing the Articles of Impeachment to which I am to answer. For, in it, I can see no shadow of corruption or dishonesty, no spark of usurpation or abuse of authority, no sign even of ignorance or mistake; nothing in which I do not deserve praise, instead of blame. It is indeed a proud thing for me, that after a scrutiny of my official conduct for twelve years, in order to find a fault, my enemies, who have instigated the House of Representatives to this prosecution, are compelled to ascribe false motives to proper actions, and can discover an offence, not in my conduct, but in their own malicious imagination. For it is not my guilt, but their malignity, which is apparent on this record.

Misdemeanor in a public office is a public offence; for it is an injury to the public. Every public offence is indictable. Misdemeanor in a public office is impeachable: for every civil officer is impeachable for misdemeanor in office. Every civil officer is, for misdemeanor in office, liable to prosecutions of two kinds; by Indictment and by Impeachment. Either mode of prosecution of an officer supposes the same offence; and nothing can be an offence on Impeachment, which would not be an offence on Indictment; nor is a conviction or acquittal on Impeachment any bar to Indictment for the same offence. Every offence includes, with an unlawful act, an evil intention: for it would be absurd to punish, where the mind is not guilty. But an evil intention alone will not, before an human tribunal, constitute an offence. That alone is cognizable only before the tribunal of God. To give man jurisdiction of it, an unlawful act must accompany it. The Act must be *plainly* unlawful, either evil in itself, or forbidden by law; or it cannot be an offence: for it would be absurd to punish an act not plainly unlawful; and every man is free to do what no law forbids. Usurpation, transgression, or abuse of public authority, is forbidden by law. When an officer exercises more power than the law gives him, exceeds the bounds of his authority, or abuses his authority to improper purposes, he does an unlawful act. But to make this unlawful act an offence, a proper object of punishment, it must appear, from the nature of the act itself, or from some other signs, that he must have known it to be unlawful, and did it with an evil intent. For cruel would be the situation of officers, and cruel would be the situation of citizens, if, for every unlawful act arising from mistake or accident they were to be considered as subjects of punishment! It is no answer to this, that the punishment on Impeachment cannot exceed removal from office, or disqualification to hold any office: for, as no Impeachment will lie, but for a misdemeanor in office, and every misdemeanor in office is indictable, the officer impeached still remains liable to indictment, trial, judgement and punishment according to law.* An Impeachment lies only where an Indictment lies; no officer can be convicted on an Impeachment, who ought not to be convicted on an Indictment; and the punishment on Impeachment is cumulative not exclusive.

The acts for which an officer may be impeached, are precisely those for which he may be indicted as an officer; misdemeanors in office, offences or unlawful acts done with

* *Const. Art.* iv. *Sect.* 3.

an evil intention in his official capacity. For such only can he be convicted as an officer on an Indictment; and for such only can he be convicted on an Impeachment. And no officer can be convicted on an Impeachment, unless, on the same charge, and on the same evidence, he ought to be convicted on an Indictment. The ground of both is an unlawful act with an evil intention. Impeachment is Indictment in other form, adopted in England for great offenders, whose influence might defeat the justice of the ordinary tribunals, and retained in Pennsylvania, either from similar motives, or from imitation. The House of Representatives is the Grand Inquest, which finds the Indictment; and the Senate is the Traverse Jury and the Court which tries the truth of it and gives judgment. But here, as in the ordinary courts of justice, the officer impeached is considered as an offender; and, if it cannot be proved that he has done an unlawful act with an evil intention, he must be acquitted here, as he would be acquitted in the ordinary Courts. On the question whether guilty or not, the degree of punishment is no proper consideration. This only comes in view when guilt is ascertained. And it would be a strange and incongruous thing, if the Senate, because the punishment which they can inflict may be thought light, should pronounce an officer guilty, when a jury, trying him on the same charge would feel it their duty to pronounce not guilty. Why declare a man criminal unless he be so?

If, "for any reasonable cause, which shall not be sufficient ground of impeachment"* an officer has become incompetent for a proper discharge of the duties of his station, and the public good requires his removal; there is no necessity, in order to effect this, that he should be held up as a criminal. The people can remove the Governor in three years, Senators in four years, and Representatives in one year. Two thirds of either House of Assembly may expel any of its own members. † On the address of two thirds of each House, the Governor may remove any of the Judges ‡; and on the address of both Houses, any Justice of the Peace §. And other officers are removed at the discretion of the Governor. Where removal, and not punishment, is the end in view, impeachment therefore is not necessary. The end of impeachment is punishment, and its object is guilt: and there never ought to be impeachment where there is not guilt; never but where there is *an unlawful act done with an evil intent*: *fault* alone, without *guilt* is no ground of impeachment.

* *Const. Art.* v. *Sect.* 2. † *Art.* 1. *Sect.* 2. ‡ *Art.* v. *Sect.* 2. § *Sect.* 10.

Government is an abſtract idea, its reality is in its officers. Whatever be its form, it is good or bad in effect, as its officers are good or bad. To make its officers good, and, in effect, the Government good; motives muſt be held out to good men to accept of public offices. Highly as I prize patriotiſm, (and no man prizes it more highly) I think it is entertaining too flattering an idea of fallen humanity, to depend on patriotiſm alone as the ſole motive (though it ought to be the chief motive) for accepting and executing the duties of a public office. Private intereſt ought to be united with public duty, and honour and reward attend on public employment. Some ſtability ought to be given to the tenure of public office. In the calm of proſperity, it is not to be expected, that the purſuits of private life, and the cares of family proviſion, will, from patriotiſm alone, be raſhly abandoned for an office of a day. If abſolute independence cannot, in all caſes, be added to the tenure of office, a qualified independence ought to be implied; a condition that the office ſhall be held, while its duties are competenly performed. No private paſſions ought to interfere, either of affection, malice or revenge. Removal from motives of party or private paſſions is a ſacrifice of public duty, and public good; arbitrary removals are wanton injuſtice; impeachments without guilt are cruel perſecutions; all ſuch removals and impeachments are acts of tyranny; and the ſtate in which theſe prevail will baniſh from its offices every man of an honeſt independent ſpirit, and fill its public ſtations with knaves and ſycophants.

But of no officers is the tenure of office ſo ſtrongly protected by our Conſtitution, as thoſe of the judiciary. All others are either dependent on the will of the Executive (which however is preſumed to be a will dictated only by the public good) or have their limits preſcribed ſo that we can calculate to a moment when their authority will expire, unleſs reanimated by the will of the people, the great ſource of all political life. The Governor, all potent as he is, with his hundreds of officers bowing to his nod, muſt, unleſs revived by the will of the people, lay down his *fasces* at the end of three years; and, in the humble walks of private life, may be joſtled by thoſe on whom he now looks down. The members of this Honorable Senate, who now ſit on the trial of a Judge may none of them poſſeſs this power in four years, many of them not in three years, ſome of them not in two years, and a few of them not in one year; unleſs revived by the will of the people. There is no member of the Honorable Houſe of Repreſentatives who can ſay that the

power which he now poſſeſſes will be his at this time next year, unleſs revived by the will of the people. So precarious is the condition of all other officers. But to a Judge our Conſtitution aſſigns a tenure of office, which may be permanent as the world itſelf; limited by an uncertain boundary, death or miſbehaviour. He may die before he miſbehaves, and the world *may* ceaſe to exiſt as ſoon as he.

In this, as in many other uſeful things, we have learnt from the experience of England. There, while the Judges held their authority during the pleaſure of the Crown, they were ſometimes its inſtruments to oppreſs individuals. Soon after the revolution, when the principles of liberty, and the intereſts of the people began to be more effectually regarded, permanent ſalaries were eſtabliſhed to the Judges, by Act of Parliament, and their commiſſions were extended to good behavior. Still however they were underſtood to expire on the demiſe of the Crown, the ſource of all judicial power. But on the recommendation of the preſent king, in the firſt year of his reign, the Judges were, by act of Parliament continued in their offices, during their good behaviour, notwithſtanding any demiſe of the Crown, and their full ſalaries abſolutely ſecured to them, during the continuance of their commiſſions; "as eſſential to the impartial adminiſtration of juſtice; as one of the beſt ſecurities of the rights and liberties of his ſubjects; and as moſt conducive to the honor of the Crown."*

In ſuch ſtate of independence has our Conſtitution placed the Judges of Pennſylvania. Their commiſſions are during good behaviour, and their ſalaries cannot be diminiſhed.† And this is eſſential to the impartial adminiſtration of juſtice, one of the beſt ſecurities of the rights and liberties of the citizens, and moſt conducive to the honor of the State.

But it is not in reſpect of emolument and duration only, that the independence of the office of a Judge is ſecured. Executive officers are liable to civil actions, if, by any miſtake or error in the exerciſe of their office, they injure any individual. The rules for Executive conduct are generally plain, poſitive and direct; a ſtrict conformity is practicable and neceſſary. It is otherwiſe with the exerciſe of judicial power. Its principles are leſs obvious and more complex, and preſent not the ſame features to every eye. No man would accept the office of a Judge, if his eſtate were to anſwer for every error of his judgment, or if his time and pro-

* 1 *Comm.* 267-8.—† *Conſt. Art.* v. *Sect.* 2.

perty were to be wasted in litigations with every man whom his decisions might offend. It is therefore a settled principle, that, however erroneous his judgment, or however injurious to a suitor, a Judge is never liable in any civil action for damages arising from his mistake; as he is never liable to any criminal prosecution, but for an evil intention manifest in an unlawful act, corruption, or wilful illegal oppression.

Thus anxiously have our constitution and laws put judges, while they act honestly, above all dependence and all fear, from any individual, from any branch of the Government, or from the people: that, abstracted from all apprehensions, they may administer justice impartially, protect the rights and liberties of the people, and promote the honor of the state. The end of all government is the good of the people: and nothing is more conducive to this end than the independence of the Judiciary. No principle, not even the principle of representation itself, goes deeper into the constitution of a free Government, than that of an independent judiciary, without an independent judiciary, liberty must be always in danger, and, however excellent the laws, the people may be in servitude. Laws derive their force only from their execution, and, without an independent judiciary, to administer the laws, they become nugatory, or may be converted into instruments of oppression. An independent judiciary is essential to liberty. The temper and disposition of the people may indeed ward off tyranny, even where the judiciary may be dependent. But it may also do this where the legislature is not founded on representation, or where any other branch of the government is improperly constituted. The temper and disposition of the people will, under any government, have a commanding influence. But, in constituting a government, the temper and disposition of the people (important and essential as it is,) must not be relied on, as the only safeguard of liberty. For their own good, it is necessary also, that restraints be laid upon the people, as on every branch of government. The people are liable to hasty passions and temporary delusions, as inimical to their true interests, as the worst designs of their worst enemies. Hence arises the necessity of deliberate discussion, delay and complexity of decision, mutual co-operation and mutual restraint. For if any one branch of government could commence, determine and execute any purpose, or if all the branches of government be instantaneously acted on by the will of the people, all public transactions would be affected by temporary passions, and the administration of government as unsteady as the winds or the waves.

This is a ſubject of great importance, that deſerves a deep and attentive examination. Wherever the whole ſovereignty is veſted in one man, or in one body of men, the Government is arbitrary. It is not the individuality of the perſon who exerciſes the whole ſovereignty, but the union of all power, that conſtitutes an arbitrary government. Wherever there is an union of all power, the government is arbitrary; whether this power be exerciſed by one, by many, or by the whole people. It is the diſtribution of power that ſecures liberty; and, to ſecure this, the diſtribution muſt be real, not nominal. For though you ſhould diſtribute power into a thouſand branches, if you do not ſecure the independence of each branch, but give to one an aſcendency or influence over the others, you, in fact, give to this predominant branch the whole ſovereignty, for you enable it, together with its own power, to exerciſe the powers of all the reſt, by its influence over them; and you convert a free into an arbitrary government. In a republican government like ours, the ſovereignty is broken into parts, and diſtributed to different branches. And though our government be founded on the important principle, that the ſovereignty is in the people; when a conſtitution is adopted, the people is no longer ſovereign. They have then laid down their ſovereign power; they are ſubjects to the conſtitution; they have retained but part of the ſovereignty; they are but a branch of the government; they are the elective branch; and, in other parts of the ſovereignty, they are ſubject to the other branches, the legiſlative, the executive, and the judiciary: and all are ſubject to the conſtitution. In this manner does the conſtitution protect the liberty of the citizen againſt any arbitrary power in the whole people, or any branch of government, by diſtributing the whole ſovereignty into diſtinct portions, and aſſigning each of thoſe portions to a diſtinct branch, and giving to each branch the excluſive power of exerciſing the whole of its own portion uncontrolled by any other, with a power in other branches to control it, if it exceed its own portion. Thus each branch is independent in the exerciſe of its own power, and ſo checked by others that it cannot go beyond it. All branches are equal; none is ſubject to any other: they are all co-ordinate; none is ſubordinate. The people are ſovereign and independent, in the elective branch; the Legiſlature, in the legiſlative; the judiciary, in the judicial; and the executive, in the executive branch of government. There is no ſuperiority in any one over any other, in the exerciſe of its own functions. This is the ſolid foundation of republican civil liberty; and whatever diſturbs the independence of any branch, ſhakes the whole

fabrick of Republican government: Liberty is no longer ſafe, when this equality of branches is deſtroyed; whether the preponderance be given to the people themſelves, or the branch moſt within the control of the people, or to the branch the moſt remote from their influence. Let it never be forgotten, that, in the diſtribution of power and the independence of authorities, Republican liberty conſiſts.

I am not publiſhing any ſtrange doctrine. This is a doctrine, than which none was conſidered more ſound and orthodox, by the ſoundeſt and moſt orthodox Republican; the ſeparation and independence of the powers of government. But lately a novelty in Republican politics has ſprung up, which, if it get head and prevail, I take upon me to ſay will deſtroy liberty. I will not engage in any diſquiſition on this ſubject, nor call your attention to tranſactions of paſt or preſent times, in this or any other country. But, attached as I am to the principles of our conſtitution, I muſt repeat my warning voice; that if we ſubmit one branch of our government to the controul or influence of another, our liberty is gone. For our liberty conſiſts in maintaining the ſovereignty and independence of all the branches. Subject one to any other, and you proſtrate the whole fabrick of a republican government. The ruin indeed may not inſtantly appear, but it is not leſs certain.

I confeſs, that, if it were poſſible for me to abandon the opinion, that abſolute equality and independence in all the branches of government is eſſential to liberty; I ſhould be induced, if a ſuperiority muſt be allowed to any, to allow it to the people themſelves, or to that branch which is neareſt the people. Not that I am ſeduced by the common expreſſion, that the people never do wrong, (for I think they are perhaps more eaſily miſled from their true intereſts, than any other branch of the government;) but becauſe I think ſuch ſuperiority (if ſuperiority muſt exiſt) moſt analogous to to principle of our government. But my opinion is, that a Republican government cannot exiſt, where there is a ſuperiority in any of its branches. Equality among the branches of government is as eſſential a characteriſtic of Republicaniſm, as Equality among the citizens. Diſtinction and independence of authorities is the ſecurity of a free government.

The other branches of the government are more immediately or remotely within the reach of the people, the elective branch. The judiciary is not within the reach of the people. If none of the branches of the government were within the reach of the people, there might be arbitrary

power in one, or in a combination, of the other branches. If all the branches of government were within the reach of the people, there might be arbitrary power in the people, as dangerous in them as in any other branch of the government. Hence, in every government conſtituted on the principles of liberty, there muſt be ſome one branch independent of the people, and of the other branches; to protect the people againſt the other branches, and the other branches againſt the people. This intermediate independent branch in our government is the judiciary: which is the guardian of the conſtitution; the guardian of the people againſt the legiſlative and executive power; the guardian of the Legiſlature, againſt the executive and elective power; the guardian of the executive, againſt the legiſlative and elective power; and the guardian of every individual, againſt every power. No branch of the government exerciſes more important functions of ſovereignty; none is more eſſential to the preſervation of the conſtitution, and the protection of public and individual rights; none ſo influential on the intereſts and happineſs of the people; and of none ought the independence to be cheriſhed with ſuch ſacred reſpect. Touch its independence, and liberty is gone. Make it ſubſervient to either of the other branches, and the people are deprived of their protection. Make it ſubſervient to the people, and the other branches of government have no protection. Remove the independence of the judges, and where is the authority to prevent ſome other branch, or a combination of ſome of the other branches, from ſeizing arbitrary power? An ambitious and intriguing executive, with a weak or venal Legiſlature, may deſtroy the liberties of the people, and make the people themſelves the paſſive or willing inſtruments of their own ſlavery. When the ſheep had ſurrendered their dogs, the wolves tore them in pieces.

It is not, therefore, for the ſake of the judges, but for the ſake of the people, that our conſtitution has ſo carefully guarded the independence of the judiciary; that the judges, ſet above all fear, may boldly exert their authority for the protection of every public and private right. Who can prevent oppreſſion from illegal acts of the executive? The judiciary. But dare the judiciary do this if the judges lie at the mercy of the executive! Who can prevent oppreſſion of individuals from temporary paſſions of the people, or malice of influential demagogues? The judiciary. But dare the judiciary do this, if the judges lie at the mercy of the people! Dare an inferior diſpute the will of a ſuperior! Whatever branch of the government aſſumes a ſuperiority over the

judiciary, will ſoon draw to itſelf arbitrary power. So eſſential to liberty, and the due adminiſtration of juſtice is the independence of the judges; that, if the conſtitution laid no injunction, it would be the duty of the legiſlature to make the judges independent. This duty is not merely poſitive, as preſcribed by the conſtitution: it is alſo a moral duty, riſing out of the principles of liberty, ſafety and juſtice. The Britiſh parliament, without any imperious injunction of a conſtitution, made their judges independent, to attain the impartial adminiſtration of juſtice, ſecure the rights of the people, and promote the honor of the ſtate.

But is there no danger from this independence of the judges! There can be none. It is a ſhield to the people; it never can be a ſword. The judiciary branch has no patronage, no diſpoſal of public money. Its powers and duties are limited. It can make no laws: it only pronounces laws already made. The reſiduary power of government is in the legiſlature. The legiſlature, limited only by the conſtitution, can make what laws it pleaſes, and change the laws as it pleaſes. Guarded as it is by the powers of the legiſlature, of the executive, and of juries, the power of the judiciary is, and always muſt be, harmleſs and inoffenſive: and, from this, and its eſſential uſefulneſs, this branch of government ought to be treated by the people, and by every other branch of government, with peculiar reſpect; and its independence ſacredly preſerved, for the preſervation of liberty and juſtice.

This independence of the judges conſiſts in their being ſecured in their office during good behavior, and in the payment of their ſalaries without any diminution. This puts them above all fear. Some have gone ſo far as to think that all motive of hope ought alſo to be removed, by prohibiting any augmentation of ſalary. This was propoſed in the laſt convention of this ſtate. But the probable reduction of the value of money, during the life of a judge, rendered this proviſion manifeſtly improper.

But this independence of the judges ought to be a real, and not a nominal independence. In vain does the conſtitution preſcribe that the judges ſhall hold their office during good behavior, with their ſalaries undiminiſhed, if the legiſlature may harraſs them with frivolous impeachments, or arbitrary addreſſes for removal, or wantonly ſeparate their reſidence from their juriſdiction. Theſe are abuſes of legislative authority, frauds upon the conſtitution, and oppreſſion of the judges. It is deſtroying the protection of the peo-

ple; for it is humbling, degrading and enervating a power eſtabliſhed for the protection of the people. It is removing all motives to a manly and uſeful exertion of judicial authority, and teaching the judges a tame obſequious ſpirit of ſycophancy and baſe compliance. It is making the judges ready tools of every reigning party, and reigning paſſion, proſtitutes to popularity, and fluctuating ſlaves to influence. I know not a name too bad to give to a diſpoſition ſo dangerous, to a vanity of perverted power ſo deſpicable but pernicious. It is foſtering meanneſs and corruption in the nobleſt branch of the government, and poiſoning the ſprings of the adminiſtration of juſtice. Juſtice ought to be ſtern, ſteady, uniform and uncomplying. If you indulge this ſpirit, you will make her veering to every gale, and ſhifting to every point of the compaſs. You may thus indeed break the ſpirit of the judges; but you deſtroy the ark of the people's ſafety. The temper of a judge ought to be erect, fearleſs and formidable; if you make it fawning, ſubſervient and courting, you indeed eſtabliſh the ſuperiority of the legiſlature; but you lay its foundation in the grave of the liberties and rights of the people, and raiſe a ſtructure of arbitrary power. You erect a citadel, which will firſt overawe all other authorities; but, when you can no longer keep the key or guard the works will overthrow you. Without a really independent judiciary, no republican government can ſtand, and no people can be free.

The power of impeaching judges, is an uſeful power; the power of removing judges may be an uſeful power: but the utility of both depends on a proper exerciſe; and the abuſe of either, will deſtroy either. Oſtraciſm was ſaid to be uſeful in Athens; but, when perverted, it became contemptible, and fell into diſuſe. If the Houſe of Repreſentatives wiſh to preſerve reſpectability to their power of impeaching, they muſt not uſe it on all occaſions: they muſt uſe it only on fit occaſions, or it will fall into diſgrace.

I ſtand not here, to claim *impunity* to the judges; I ſtand not here, to claim *favor* to the judges; I ſtand not here, to claim any *indulgence* to me. Conſcious as I am, of honeſt motives and proper conduct, I claim only ſtrict juſtice, meaſured out, as it is meaſured out to the worſt of criminals, by known and eſtabliſhed rules.

On theſe terms, I now requeſt from the Senate, a patient and candid examination of the articles of accuſation and impeachment, which the Houſe of Repreſentatives has thought proper to prefer againſt me.

*Article* I. Charges " That the ſaid Alexander Addiſon &c."

I am here charged as preſident of a court of common pleas. A preſident of a public body is conſidered as the mouth of that body. This muſt be eſpecially the caſe in the court of common pleas, conſtituted as they are; where the preſident only is preſumed to be ſkilled in the laws, and other perſons are aſſociated with him*. Some of the aſſociates may alſo have made the ſcience of law their ſtudy. But law is an extenſive ſcience which, underſtood in all its parts, is a refined ſyſtem of good ſenſe, but viewed only in detail, by eyes which do not contemplate the whole, it may ſeem mixed with abſurdities. Hence a half lawyer makes the worſt judge, for his common ſenſe is fettered by arbitrary rules, of which he underſtands neither the principle nor the application. In the court of common pleas it is not as in the ſupreme court: for though all the judges are, it is true, equal in power, all are not preſumed equal in knowledge. Situation will make habits and manners. Much of the burden, and much of the reſponſibility devolves on the preſident of a court of common pleas: and, in this reſpect, there is no analogy between his ſituation, and that of a chief juſtice of the ſupreme court; whoſe aſſociates are not only equal to him in power, but equal to him in knowledge; and inferior only in dignity and precedence. I could not be underſtood as expreſſing any cenſure on the conſtitution of the county courts. On the contrary (and I ſpeak from experience, the true ſource of knowledge) I think it well calculated and better calculated than any other, for public utility, There is a gradation in all things, and violent tranſitions, from one extreme to another, are not according to the ſyſtem of nature. To ſtep at once, from a juſtice of the peace, to a county court as reſpectably conſtituted as the ſupreme court, might ſeem too violent an exertion. To recur to the old ſyſtem of juſtices of the peace, no wiſe man will recommend. But a mixture of popular temperament may advantageouſly be given to the county courts. A greater knowledge of witneſſes, jurors, and ſuitors will thus be in the courts. Many tranſactions, of a public but local nature, are committed to the county courts; for the execution of which ſuch a knowledge of characters in the county, as cannot generally be had by judges not reſident in it, may be often neceſſary. Judges reſident in the county, and occaſionally converſing with the people, may (and this is of great importance) remove miſconceptions and prejudices, which will exiſt againſt the wiſeſt conduct of any court.

* *St. L.* 93.

Skill too may, by this conſtitution of the county courts, be attained; if care be taken to appoint preſidents of underſtanding, knowledge, and experience; and aſſociate judges of good ſenſe, modeſty, and firmneſs. For my part, I can ſay, that I have had great ſatisfaction and aſſiſtance from thoſe judges, eſpecially from thoſe who have been longeſt aſſociated with me. What they have exeprienced from me, they have themſelves declared. And it is my ſincere belief, that an alteration of the county courts will not be followed by popularity or ſatisfaction.

This much I thought proper to ſay of the ſituation in which I ſtand impeached by this article. With reſpect to the article itſelf, partiality in my own caſe may have led me into a miſtake, and others may view it differently from me; but to me it ſeems the moſt extraordinary criminal charge that I ever ſaw. The only fact, which it charges, is that, in the court of common pleas of Allegheny county, after John Lucas, one of the aſſociate judges of that court, had addreſſed a petit jury in a cauſe then on trial; I, who was preſident of that court "did openly declare and ſay, to the ſaid jury, that the addreſs delivered to them, by the ſaid John Lucas, had nothing to do with the queſtion before them, and that they ought not to pay any attention to it". Now, ſuppoſe I did ſay all this, what is there criminal in it?

What the cauſe or what the queſtion before the jury was, this article does not ſet forth; as it ſurely ought to have done. What evidence was given on the trial, is not ſet forth. What the addreſs was, which the judge Lucas delivered to the jury, this article does not ſet forth; as it ſurely ought to have done. In any court of juſtice, ſuch an indictment would be quaſhed on motion; and, even after a verdict, it could not ſupport a judgement. Without ſtating the cauſe which was on trial how could I prepare myſelf for defence? Is it reaſonable to preſume that I muſt remember in what particular cauſe, I uſed ſuch expreſſions, and the ground on which I could juſtify them? Was I to be brought down here blindfolded, and my eyes opened only here? I have been brought down blindfolded; for all information of the nature of the charge was cruelly refuſed. No criminal act is ſtated on this record; no act which I could reaſonably be preſumed to be prepared to juſtify. I might have recollected one tranſaction, and prepared to juſtify it. But, when I came down here, Mr. Lucas might have ſworn to another. Unleſs the queſtion before the jury, and the addreſs delivered by Mr. Lucas, be ſet forth on this record, how can you ſee, as you ought to ſee on this record, that I was miſtaken, much leſs criminal, in ſaying to

the jury that this addreſs of Mr. Lucas had nothing to do with the queſtion before them, and they ought not to pay any attention to it? To make even a miſtake in me appear on this record, this ſtrange preſumption muſt me made, that, in no caſe is it poſſible, that Mr. Lucas ſhould ſpeak impertinently, and that he muſt always ſpeak to the purpoſe. And ſhall a criminal charge be made on a preſumption ſo wild and extravagant as this! The addreſs of Mr. Lucas may have been impertinent to the caſe, may have had nothing to do with the queſtion before the jury; and, if ſo, it was my duty, as preſident of the court, to ſay to the jury, that they ought not, in their deliberations, to pay any attention to it. In the act ſet forth on this record, no guilt, not even fault, appears: it even may have been an act of duty and of merit.

But, to make it an offence, a kind of attempt is made to alledge an evil intention. It is ſtated, that I ſaid thoſe words, "thereby degrading or endeavouring to degrade and vilify the ſaid John Lucas, and his character and office; to the obſtruction of the free impartial and due adminiſtration of juſtice, and contrary to the public rights and intereſts of this commonwealth." This manner of expreſſion, when uſed in indictments, is always after an offence has been compleatly ſtated; always after an unlawful act, with an evil intention, has been expreſsly alledged. This manner of expreſſion is never employed to alledge an offence; but, from an allegation of an offence, to draw an aggravating concluſion. Here there is a concluſion drawn without any premiſes to ſupport it. Take away this concluſion, and will any man ſay that any offence is ſtated! I am to anſwer only for my own conduct; not for the inferences which the framer of this article may have choſen to draw from my conduct.

This Article is plainly, on every principle of ſound reaſoning, an abſolute nullity. It charges me with no unlawful act; it charges me with no evil intention: the only evil thing in it is of the making of him who drew up the article.

But admitting that an evil intention has been expreſsly annexed to the act with which I am charged; would this make an indictable or impeachable offence? If the act itſelf be lawful will an evil intention make it an offence? Are ye judges of the heart? Or can a human tribunal ever infer an evil intention, but from an unlawful act? An unlawful act muſt be firſt proved, before you take up the conſideration of the intention, and both muſt concur to make an offence.

All that this article alledges againſt me is, that I ſaid to to the jury, "that the addreſs, delivered to them by John

Lucas, had nothing to do with the queſtion before them, and that they ought not to pay any attention to it". The reſt of the article is nothing to me ; it is no allegation againſt me ; it is merely the work of the perſon who drew up the article. Is there, then, any thing unlawful in thoſe words, ſtanding as they ſtand in the article, without any thing to explain them ? Do they ſtate any unlawful act ? Can any evil intention be fairly inferred from them ? Do they admit of but one concluſion to be drawn from them ? Two concluſions may be drawn from them ; either that Mr. Lucas was right, and I was wrong ; or that I was right, and Mr. Lucas was wrong. Which of the concluſions was the moſt probable, could be judged only by thoſe who know Mr. Lucas, and know me. Which was the true concluſion, could be known only by thoſe who heard his addreſs and my remark, and what gave occaſion to both, or were well informed of all. But, as the concluſion drawn in this article is not a neceſſary concluſion, there is no right to draw it without premiſes ; and if there were premiſes, they ought to have been ſet out, that I might have ſeen them and prepared myſelf to anſwer them.

I preſume to hope, that it now ſufficiently appears to the Senate, that this article of accuſation and impeachment, ſo ſolemnly "preferred by the Houſe of Repreſentatives of the commonwealth of Pennſylvania, and exhibited to the Senate of the ſaid commonwealth," is a mere nullity ; that it reſts on no foundation, has no juſt reaſoning to ſupport it, and proceeds entirely on begging the queſtion.

But waving the inſufficiency of this article, I now requeſt your attention to the facts on which it is founded : and if, in them, you find proof of any unlawful act with an evil intention, I claim no advantage from the unſubſtantial nature of this article of impeachment.

It is manifeſt from the nature of the action which was on trial before the jury, and of the addreſs of Mr. Lucas to that jury, that his addreſs was altogether foreign to the iſſue ſubmitted to the jury, and ought to have no influence on their verdict*. On this ſtate of the caſe; then, I appeal to this Senata, whether the addreſs, delivered by Mr Lucas to the jury, had any thing to do with the queſtion before them ; and, whether, if it had nothing to do with the queſtion before them, it was not my duty to tell the jury, that, in deliberating on their verdict, they ought not to regard the circumſtance ſtated in that addreſs.—This is "the head and front of my offending."

* *See Appendix No.* I.

I, as president of that court, had delivered a charge to the jury, stating the evidence and the points of the case, in the manner that I thought right. To disencumber a case of all useless and impertinent matter; to disembarrass the jury from all extraneous circumstances, and direct their view only to the material points, is the great object of a charge to a traverse jury. When a president has done this, if an associate judge will again throw in extraneous and impertinent matter, to perplex the considerations of the jury; is it not the duty of the president, to cast it out, and tell the jury to pay no attention to it? Does not the free, impartial and due administration of justice, do not the rights and interests of this commonwealth, require this? Who degrades and vilifies such an associate judge? Is it not himself? Who obstructs the free, impartial and due administration of justice? Is it not such an associate judge? Who acts contrary to the public rights and interests of this commonwealth? Is it not such an associate judge? Sure I am, that I did not degrade, nor endeavor to degrade or vilify, this John B. C. Lucas, his character or office; that I obstructed not the free, impartial, and due administration of justice; that I did nothing contrary to the public rights and interests of this commonwealth. I did what I felt and knew to be my duty, and what I should have thought myself wanting in my duty, if I had not done. And in doing this, my only object was, to protect the honor of the court, and promote the due administration of justice. I deserve praise for it, not impeachment: and a fair statement of the facts alluded to by this article, must, I think, exhibit me, to every unprejudiced eye, not as an offender, but as a meritorious officer.

*Article* II. of this impeachment is not liable to all the objections against the first. I hope however, if the Senate will indulge me with a patient hearing, to satisfy every candid mind, that this accusation, in a criminal view, is as groundless, and my conduct, in this respect, as innocent at least, if not as meritorious, as that which is the subject of the first article.

This article does alledge an unlawful act; and, from the allegation of an act plainly unlawful, the inference of an evil intention may be formally drawn. But it is not enough that the charge against me be formally laid; the proof of this charge must be substantially made out. It must be proved, to your satisfaction, that I did an unlawful act, and that I did it *knowingly and wilfully*. A mere unlawful act from

a miſtake or error in judgment cannot be alledged againſt me as a crime. Not only *wrong*, but *wilful* wrong, muſt be made out, or the offence is not compleat. There muſt be *an unlawful act with an evil intention*, or you cannot ſay that there is *guilt*.

The ſubſtance of the allegation againſt me is, that I "did, at a court of quarter ſeſſions, unjuſtly, illegally and unconſtitutionally, claim, uſurp, and exerciſe authority not given or delegated to me by the conſtitution and laws of this commonwealth." The fact ſpecified of this uſurpation is, that I "did unjuſtly, illegally and unconſtitutionally ſtop, threaten and prevent John Lucas, a judge of that court, from addreſſing a grand jury concerning their rights and duties." From this allegation and ſpecification, the concluſion is drawn, of my "abuſing and attempting to degrade the high offices of preſident and judge as aforeſaid, to the denial and prevention of public right, and of the due adminiſtration of juſtice."

Though this article ſufficiently alledge an offence, an unjuſt, illegal and unconſtitutional act; before I be convicted of this, it muſt be made out, that this act was clearly unjuſt, illegal and unconſtitutional; ſo manifeſtly illegal, that I muſt have ſeen it, and could not be miſtaken. Unleſs it be ſo clearly made out, no evil intention can be inferred; and, without an evil intention, there can be no crime. I muſt not be made a criminal from a miſtake of the head, from an error in judgment: Some miſchief, ſome perverſion, ſome corruption of the heart muſt be ſhewn. I aſk no favor, I claim no indulgence, I deſire only juſtice; that I may be tried by known and eſtabliſhed rules.

Now where is the rule of natural juſtice, where is the rule of common law, where is the clauſe in any ſtatute, where is the clauſe in the conſtitution; that makes it unjuſt, or illegal, or unconſtitutional, for the preſident of a court, to prevent an aſſociate judge from delivering a formal charge to a grand jury; I ſolemnly declare, I know of none; none from which ſuch inference can be clearly or even fairly drawn.

Where is the uſage to ſupport the right claimed for this aſſociate judge? Was it ever before claimed? Can a ſingle inſtance be produced, where, after a preſident had delivered a formal charge to a grand jury, an aſſociate judge undertook to deliver another formal charge? Shall I be made a criminal for reſiſting an innovation founded on no law! Is not he the offender who introduces the innovation, rather than he who reſiſts it.

Manifeſt inconvenience would reſult from the indulgence of this claim. If one aſſociate judge may do this, all may do it; and who ſhall limit them in the time which each may occupy, or the ſubjects on which he will expatiate? Who ſhall prevent wild extravagance of opinion, and endleſs mutual altercation in public? Whither would all this lead? "Let all things be done decently and in order."

Every body of men, united for a public purpoſe, is a ſort of corporation; and forms long practiſed among them become, without any expreſs inſtitution, a kind of bye laws for regulating their conduct. To break through any of thoſe forms is a violation of order and decorum, which requires an expreſs permiſſion of the public body to ſanction. It is the duty of the preſident of every public body to preſerve the uſages and forms of order; and, in this, he can be controlled, not by one member, but by the public body. There are members of this Senate, who are acquainted with proceedings in eccleſiaſtical courts. In a preſbytery, for inſtance, the moderator opens the meeting with prayer. Suppoſe, after he has done this, another member preſuming that he could perform this duty more properly, ſhould riſe up to make another prayer; would not the moderator ſtop him? In doing this, would he violate the rights of this member, or obſtruct the due adminiſtration of the affairs of the church? Could the moderator be proceeded againſt as an offender? Is he not preſerving the decent order of their proceedings? You, ſir, as Speaker of this Senate, know that there are certain duties, which, in every public body, it belongs to the preſident excluſively to perform: and, though another member may think he can perform thoſe duties better, he muſt not aſſume them.

I can ſee Mr. Lucas' conduct in no other light, than as a ſtruggle whether he or I ſhould be preſident of the court of Allegheny county. And I ſolemnly declare to the Senate, in the preſence of *Almighty God*, that I ſhould have thought I betrayed the honour of my truſt, and failed in my duty, if I had acted otherwiſe than I have done. If, in this opinion, I err, it is a deluſion which I cannot overcome. I have conſidered it with attention and deliberation; and my judgment compels me to adhere to it. The legiſlature may make a law, declaring what ſhall be done hereafter; and I ſhall reſpectfully ſubmit to it. But to no power on earth, ſhort of the legiſlature, or a judicial determination of a ſuperior court in the point, can I ſurrender my judgment on this point.

If I have not very much deceived myſelf, I think it muſt

now appear to the Senate, that in this accuſation, there is no criminality, no fault, not even any error in judgment; and that my conduct is not only innocent, but proper.

It will be obſerved, that, in all matters between man and man, in all matters relating to the immediate duties of a jury, either grand or petit, Mr. Lucas has never been reſtrained or interrupted from expreſſing his opinion publicly, and as much at large as he pleaſed; and that he has been told, that, in theſe things, he never would be reſtrained. The only reſtraint that has been laid upon him is, in making obſervations of a general nature, not immediately relating to any ſubject before the jury, but ſuch as it has been uſual for the preſiding judge of a court, and him only, to make, preliminary to the obſervations on the immediate duties of a grand jury. The reſtraint was laid on him, not by me, but by the court; purſuant to all former uſage, to promote harmony, prevent altercation, and preſerve order and decorum in the court; and from a ſenſe of duty, and not from any ill diſpoſition towards him.*

Thus it appears that Mr. Lucas was not only acting againſt my opinion, but againſt the opinion of the court of Allegheny county declared to him. So that it was not I that controlled Mr. Lucas: it was he that endeavoured to controul, not only me, but all the other judges of the court. This is a ſtrange ſort of independence for a judge to claim, a power in one to act contrary to the will of all the reſt.

I have never been of that arbitrary high handed diſpoſition, to make my own will the rule of the court. I have never uſurped power over my aſſociates, nor borne down their independent judgment. I thank God, if I had entertained ſuch a wiſh, they had ſenſe and ſpirit to reſiſt it, and would have taught me to know my place. My aſſociates and I have acted together with mutual confidence and mutual reſpect. They have born teſtimony to that:† and it is not my aſſertion, but theirs that I aſk you to believe. And I do now, with ſincerity, as if I were ſtanding, not at the bar of this Senate, but at the bar of the *great God*, the ſearcher of the hearts of men; and with a ſolemnity becoming that aweful occaſion, declare, that in my whole proceeding in this matter, I had no other motive, but to protect the honour of my place, and the order and dignity of the court in which I ſat. Of this, and of this only, am I guilty. For the unworthy motives aſcribed to me in this impeachment, I diſclaim and diſdain. I feel,

* *See Appendix No. 2.* † *See Appendix No. 3.*

that my mind is above them, and I truſt my conduct has always been above them.

Who then has abuſed, who has "attempted to degrade the high offices of preſident and judge, to the denial and prevention of public right, and of the due adminiſtration of juſtice? Who has ſet an evil example to others? Let the members of this Senate lay their hands on their hearts, and ſay, on their oaths, whether I have done this.

Here Mr. Addiſon offered to read in argument, the certificates of the aſſociate judges &c. upon which Mr. Roſs aroſe and made the following obſervations.

Mr. Roſs obſerved that the defendant's conduct on this occaſion, was ſimilar to that he had exhibited in the caſe of Judge Lucas. In the morning when he prevented that gentleman from addreſſing the grand jury, he was all mildneſs, all politeneſs; but in the afternoon he was threatening and determined. So in this court when he offered theſe certificates among the evidence which was the proper time to conſider them, finding ſome oppoſition, he politely waved the right; now he expects to exhibit them in a ſide way which we are bound to reſiſt.

Mr. Dallas roſe to ſpeak, when

Mr. Addiſon requeſted to be indulged a few words.

Mr. Dallas ſat down, and

Mr. Addiſon proceeded. The Senate muſt have heard me called a party judge; well then, if theſe certificates of fair and impartial conduct as a judge from my aſſociates, ſhall be found to be given by gentlemen of both parties, and being a party judge, is made a crime, ought not I to be permitted to exhibit certificates from the other party to do away ſuch impreſſion.

General report may be given in evidence, and could not witneſs be brought in to ſay what they had heard the other judges ſay of my general conduct in office, as well as general private character. What better than certificates from ſuch characters? would ſuch men certify falſehoods, expecting them to be publiſhed? it will not be even inſinuated that they would. I wiſh to read them here, but if I am prevented while there is freedom of the preſs, they are ſure to come abroad, they will be publiſhed to the world, and will have the weight there to which they are entitled.

One obſervation more and I have done. It is for the ho-

nor of the ſtate, that I ſhould be acquitted, if I am really innocent, more than it is that I ſhould be convicted, even if guilty.

I repeat it once more, that this court are not bound down to the ſtrict rules of evidence, which govern a common court of juſtice, conſtituted of diſtinct judges and jurors.

Mr. Dallas. I agree with the learned gentleman, that the commonwealth is as much intereſted in the acquittal of the innocent, as it is in the conviction of the guilty. But whether a man is acquitted or convicted, the acquittal or conviction muſt be the work of legal evidence. I would aſk the learned gentleman, but he does not pretend, he does not ſtake his legal reputation as a lawyer, if what he offers, he would himſelf receive as legal evidence. I am certain he would not. And does not the gentleman know, that what ſhould be admitted here as legal evidence in his own caſe, muſt be received in the caſe of every other citizen; for the law knows no diſtinction of perſons. It pays no more regard to the characters of preſidents and aſſociate judges, than it does to that of any other man.

Suppoſe an abuſe of truſt in a more honorable character than either a preſident or an aſſociate judge. Suppoſe the preſident of the United States to commit a miſdemeanor in office, in ſome caſes he might from an extenſive executive influence, obtain certificates from every quarter. When he comes before the Senate on impeachment, ſhall he riſe and ſay, I have certificates of good character from every quarter of the union, other ſtates have furniſhed precedents, they receive them, they attend to them, and allow them all the effects of legal evidence?

Does judge Addiſon claim more than others? if he does he is not entitled to his claim. Let it never be underſtood that privileges of this kind are extended to the judiciary, deſtructive of the great principle of equality on which our conſtitution is founded. Let it be known that the rules of teſtimony adopted in our courts of law upon long experience, as the greateſt ſecurity to the pure adminiſtration of juſtice, are not to departed from in any court, and produce a laxity that diſſolve them.

The managers were juſtified in objecting to the admiſſion of thoſe certificates as teſtimony; they are now juſtified in oppoſing their being read in argument: General reputation it is ſaid may be given in evidence. A man can only teſtify what had

reached his own ears direct. A. may say what he heard B. say; this is general reputation; but you are asked to receive certificates.

The defendant says that party has been mentioned; party ought to have no influence here, it is entirely out of the question. after all, as he has broke the ground of general character let me add a remark to shew that it might do an injury even to himself to admit such testimony, it is probable that the certificates he possesses may speak in favor of his talents and firmness; but were they admitted might we not present certificates of a different complexion. Is he so sure of his popularity in the western counties as to set all others at defiance; has his conduct there given no cause of complaint? it certainly has? or the gentleman would not be standing in his present situation. If such evidence was to be admitted on this occasion, I believe it would have such an effect, that even Felix would tremble.

Mr. Addison. Such language in the western counties, would not be considered very wise or very prudent.

Mr. M'Kean. I do not know what it might be very wise or very prudent to state in the western counties, but this I know, that the doctrine laid down by the learned judge, would not be deemed in a court of law, either very wise or very prudent. The law of evidence is clear, all courts do, and this Senate will, require the best evidence the nature of the case will permit, and is within the power of the party. Now I ask if this gentleman has brought himself within that rule? is this the best evidence of his general character in his power to produce? If certificates of this or any other unathenticated kind, were to be brought before him as a judge of the court, to settle an object in litigation, he would have told the counsel who offered them, I refer you to the attorney general, & what could he have answered? Nothing. The adverse counsel would justly observe, I know not under what circumstances these certificates have been obtained, I know not the characters of those who have signed them, I know not the influence employed to obtain them. Influence did I say? Yes influence. What influence may have here been employed? a judge who may have been in the habit of controling counsel, not only so, but even his brother judges on the bench. If this influence was employed upon a young man at the bar, who wished to rise in his profession, he would probably be afraid to expose his future endeavors to the scrutiny of an overbearing judge. He might enquire what says truth, but he would also listen to the voice of interest; and what says in-

tereſt? I have a family to ſupport, and on my practice they depend. But does not my practice in a great meaſure depend upon the countenance of the bench? thus intereſt oppoſes duty; what may be the reſult? He may be borne down at the bar, his clients leave him and he be driven to ſeek reſource in ſome other purſuit.

Again is this the beſt evidence he could produce? this Senate is not to be informed that certificates are ſometimes given like looſe expreſſions in converſation, without being legally confined to the truth. Sometimes certificates are ſubſcribed from motives of humanity, ſometimes from earneſt intreaty, but in neither caſe would ſuch ſubſcription be obtained were the parties on their oath to aſſeverate the truth of their contents. If they knew that wilfully and corruptly abberrating from the truth they ſubjected themſelves to perjury they would often heſitate, often decline: but it might alſo not be known to the ſubſcribers of the certificates what their object was intended to be; I know not, the managers know not, who are the ſubſcribers, therefore it cannot be ſuppoſed that there is any thing perſonal in any obſervation; they are in the abſtract, tending to ſhew the nature of this kind of evidence.

There is another rule on this point founded in reaſon and juſtified by practice. A witneſs on the examination of one point only may know much in favor of the defendant & little or nothing againſt him; we never hear a counſel aſk of a witneſs any thing but what he expects will be in favor of his client, he never aſks a queſtion with a view of injuring his cauſe, but the croſs examination brings the other ſide into view, and it often happens in this way that a trial takes a different direction and comes to a contrary concluſion to what was firſt expected. In this caſe had we an opportunity of examining viva voce the perſons who have ſubſcribed the certificates, it is not improbable but what they might be thought, even by the defendant as better omitted. Suppoſe theſe gentleman who may think him a good lawyer, an upright judge and even approving his political charges to the grand juries; were to be aſked, did you know at the time of ſigning the certificate, that judge Addiſon had prevented a brother judge on the bench from delivering his opinion to a grand jury, when it was his right and he if differed in opinion it was his duty to do ſo? Do you know that he menaced this brother judge and thereby forced him from the bench? what would they anſwer to this interogatory. Would they not anſwer that altho he had conſidered himſelf the ſole organ of the court, yet he was in this inſtance an overbearing and arbitary judge.

The defendant has complained of the diſtance at which he lives, and the conſequent expence in bringing forward his witneſſes; this as was heretofore obſerved, is no other inconvenience than would have had to be borne by any other citizen, under parallel circumſtances. Even a poor fellow who may have ſtolen a pocket handkerchief, would lie under the ſame difficulty, and would have to bring his witneſſes, no matter from what diſtance. Certificates could not be admitted in his caſe. He as a lawyer, knows all theſe difficulties, and ought to have been prepared to meet them; he cannot be ſo devoid of friends if, as he inſinuates, he poſſeſſes ſuch eſteem among his neighbors. One gentleman has attended here on behalf of Mr. Addiſon, as he informs us, without ſolicitation, and if his general reputation was to be relied upon as the great means of defence, the preſumption is, that a multitude of perſons would have volunteered in his behalf. But is general report in his favor? do the petitions againſt him for mal-adminiſtration in office? does the evidence here exhibited, prove general report to be favorable to him? It is true, the learned gentleman aſks us, would the judges and others who have ſigned his certificates ſign a falſhood, knowing they were to be publiſhed. I do not mean to charge theſe gentlemen with ſuch diſhonorable conduct. What they certify may be true, but it may not be all the truth. It is ſaid they knew the papers were to be publiſhed; Why this? was it to influence the ſubſcribers through fear, that if they did not lend their names to this kind of teſtimony, they were to be marked out?

This honorable body are ſworn to decide according to the evidence, the conſtitution and the law, and I humbly ſuggeſt they will not receive that into their minds, as evidence what is not evidence, and legal evidence alſo. He has told you, that the Senate are not to be governed by the ſame rules of evidence, as governs in courts of law. Did I underſtand him? How is juſtice? Is it diſtributed by two different rules under our conſtitution? It is impoſſible; where is the other rule, where is the precedent that has favored it? If he furniſhes neither rule nor precedent, is it neceſſary for me to eſtabliſh by argument, what is univerſally known and admitted. It is the practice in that country from which we have drawn ſome valuable principles. The law of evidence is uniform in the Houſe of Lords, the Houſe of Commons, and the civil and criminal courts in England; like rules pervade our ſupreme and inferior courts, no other is known, and I hope no other will be allowed to take place in this tribunal.

Mr. Findley. The certificates, ſo far as I have under-

ſtood, before I left home, go to ſtate the general good conduct of the preſident; the characters who have ſigned them are men of great integrity, & above all improper influence; I mean ſuch as were obtained in the county of Weſtmoreland; and from my knowledge of them I know they would not put their names to any thing which was not correct & proper; but I doubt whether they can be received as evidence, on account of their not being conformable to the uſual rules on that head. I think little good or evil can reſult from reading them, but I believe it ſafeſt to decline.

Mr. Addiſon ſaid, he meant only to preſent the certificates of the aſſociate judges.

Mr. M'Kean ſaid, that the admiſſion of one made room, for 3, 4 or 7 or more, it was the principle he ſtood upon.

Mr. Roſs ſaid, if this teſtimony had been received on the firſt day it was offered, there was no doubt but by this time it might have been rebutted; but as the teſtimony was cloſed on both ſides, he hoped nothing new would be admitted.

Mr. Whitehill. Standing here under the obligation of an oath, and bound to decide according to the evidence, the conſtitution and the law, I cannot liſten to any thing which is not evidence, and therefore muſt oppoſe the reading of the certificates.

The queſtion on permitting Mr. Addiſon to read the certificates, by way of argument, was taken and loſt.

Y E A S.

Meſſrs. Barton, Ewing and Jones.—3.

N A Y S.

Meſſrs. Findley, Gamble, Harris, Hartzell, Heiſter, Johnſton, Kean, Lane, Lower, Lyle, M'Arthur, Mewhorter, Morton, Pearſon, Porter, Reed, Richards, Rodman, Steele, Whitehill, Maclay, *Speaker*.—21.

Mr. Addiſon then proceeded.

I come now to the heavieſt part of my taſk, to wade through that rude and undigeſted maſs of obloquy which it has pleaſed the counſel to heap upon me. The people of Pennſylvania will in this caſe have cauſe of congratulation on the free courſe of the adminiſtration of juſtice in this ſtate; when they

ſee that no reſpectability of character or ſtation can ſcreen a man charged with an offence from the ſeverity of cenſorious declamation equally indulged againſt a preſident of a court at the bar of the Senate as againſt a horſe thief at the quarter ſeſſions. As I envy neither his talents nor his feelings I ſhall avoid his example. He has indeed ſet me a ſevere taſk to ſelect from a chaos of declamation any points which can be taken up and purſued in a regular courſe of reaſoning ſatisfactory to myſelf or to the Senate.

My temper, my conduct, my words, the whole tenor of my official duty, the general bent of the teſtimony, have been perverted miſconſtrued and miſrepreſented in the groſſeſt manner. If I am ſmooth it is all art; if I am rough it is all force; for criminal in any way I muſt be. Is not this placeing me on the bed of Procruſtes to which the gentleman's poetical embelliſhment might have ſo happily alluded?

In ſearch of reſemblances he has found one in judge Jeffries, a name ſeldom referred to but as proverbial of cruelty and oppreſſion. Is this paper on which I am charged ſprinkled with the tears of the widow or the orphan? Have the cries of the oppreſſed reached your ears? Have I been noted for unjuſt convictions and cruel ſentences? Go to the weſtern country and aſk.

I am repreſented as a violent party man, a tyrannical judge, a brow-beater of witneſſes, an inſulter of parties in court, and an overbearer of their counſel. Where is there any evidence of this? Men of all parties and of all profeſſions in the weſtern country have declared the contrary. Any man who ſhould ſay this in the weſtern country would be conſidered as not very wiſe and not very prudent.

Words firſt ſpoken by Mr. Lucas and repeated by me, are charged againſt me as my words and perverted in conſtruction. If Mr. Lucas ſays I differ from you, and I ſay, he and I will probably often differ; is that evidence of determined hoſtility? If he ſays ſtop me and take the riſk on yourſelf, and I ſay, I will take the riſk on myſelf; is that evidence that I was conſcious of doing an unlawful act? If he ſay how will you ſtop me, and I ſay we muſt find means for that and not be overborn by you; is that evidence that I threatened to ſend him to jail. The firſt time I heard the idea ſuggeſted of ſending him to jail, was when I was told that Mr. Brackenridge abuſed him becauſe he had not perſiſted until he provoked the court to ſend him to jail. We had other means to ſtop him; preciſely thoſe which we adopted. We ſent away

the jury. That was the only means we intended and that was ſufficient.

But it is not enough to pervert teſtimony, law too muſt be perverted. Becauſe the author of Eunomus inſtructs a jury to regard what is laid down to them as law by a court; one judge muſt be criminal who tells a jury, that what another judge has ſaid, has nothing to do with the queſtion before them. Becauſe it is laid down in Bacon's abridgement (2 Bac. 97,) that a judge is never anſwerable for an error in judgment; and to this annexes a marginal note, that for corruption he is anſwerable in the ſtar chamber and in parliament; the book is read as if the note were a continuation of the text, leaving out the important words "*for corruption;*" and made to ſay that for an error in judgment, a judge is anſwerable in parliament. Becauſe Hawkins ſays, that a judge is anſwerable in parliament for any thing, and gives inſtances of notorious corruption and proſtitution of authority; he is cited to convince you, that you may puniſh a judge for any thing whatſoever. And becauſe King Alfred (perhaps by his own authority) hanged many judges, (and for groſs corruptions) Mr. Dallas by citing this authority, would if he durſt, tell you that you ought to hang me.

Many of the caſes cited from the Engliſh books, were in times when the conſtitution of that country and the laws and adminiſtration of juſtice there were not ſettled on the regular and firm baſis on which they now ſtand, when parliament reſembled the tumultuous arraignments of antient Rome, rather than the juſt and rational ſeat of Britiſh Themeis.* Many of them were in times of ungoverned violence and furious rage of power and party ſpirit. Many of them were in times when the judges were as dependent on the king, as a day laborer on his employer, and could be turned off for what he pleaſed, and called to anſwer where and for what he pleaſed. Many of them were caſes of impeachment, which were never tried, as thoſe of Lord Finch and chief juſtice Scroggs. Such authorities would be hiſſed out of Weſtminiſter hall.

In England impeachments will lie for treaſon and felony and judgment of death may be given on them. Wherever our conſtituion and common and ſtatute law is the ſame as in England, Engliſh authorities deſerve reſpect. Wherever they differ they have no weight. We have a conſtitution which defines and regulates impeachments and the ſubjects of them.

* 2 *Wooddes.* 577.

By that we muſt be governed and not by Engliſh precedents founded on laws totally different. On this conſtitution then this Senate will ſet its foot and ſay hitherto we will go and no further. By this conſtitution an impeachment will lie only againſt an officer and for a miſdemeanor in office. A miſdemeanor in office is an offence: and an offence is an unlawful act done with an evil intention. The queſtion before you is whether guilty, or not guilty: and there is no evil intention.

On the queſtion before the Aſſembly in the year 1788, for the impeachment of the judges of the ſupreme court, Mr. Findley, then a member of the legiſlature, has juſtly and forcibly ſpoken the true conſtitutional language on this ſubject. "Though he deemed it his *duty* to pronounce, that the deciſion of the ſupreme court was a deviation from the *ſpirit and letter of the frame of government;* yet he did not mean to aſſert that *any ground* has been ſhewn for the *impeachment* of the judges. But on the contrary he agreed that Bribery, corruption, or *wilful and arbitrary* infraction of the law, were the *only true causes* for inſtituting a proſecution of that nature."* Such was the law of impeachments then and ſuch is the law of impeachment now. Though a judge acts unlawfully and unconſtitutionally; he cannot be convicted on an impeachment, unleſs he has acted wilfully ſo.

Having thus ſtated ſome of the perverſions, of teſtimony and of law made by Mr. Dallas I will now examine his reaſoning on the points on which he has relied.

1. *The president and each of the judges are equal in authority like the speaker of a house, the chairman of a committee, the foreman of a grand jury.* This is proved from the conſtitution and the law eſtabliſhing courts. The judges being all equal none can control any other, and their authority being derived from the conſtitution and the law; no more can be veſted in one than in another, nor can any agreement among themſelves ſtrip one judge of any part of his lawful authority, and veſt that portion of it in another.

I do not object to theſe principles but to their aplication to this caſe. Admitting that the conſtitution gives them all equal power, when they come together may it not neceſſarily ariſe out their union on one ſubject that they ſhall lay down certain rules of order for the regulation of themſelves in their proceedings, & agree that certain things may be done by ſome of themſelves which may not be done by others. For inſtance, by long eſtabliſhed uſage riſing out of an expreſs or implied

* 1 *Dallas Rep.* 335.

agreement among themſelves the foreman of a grand jury ſigns a bill, the chairman of a committee announces a report, a ſpeaker declares the rules of the houſe, and a preſiding judge delivers a charge to a grand jury. Theſe duties riſe not out of the conſtitution, for all the members are equal ; but they flow from agreement and uſage among themſelves. Admitting that the conſtitution gives equal powers and duties to all, thoſe powers are by the conſtitution confined to official duties ; and though no agreement or uſage could change their powers and obligations in official duties ; it does not follow that by conſent the court may not agree to do ſome other things not ſtrictly official but ſuppoſed proper and give the power of doing that to one of their members excluſive of the reſt. If the thing to be done be lawful, or the conſtitution does not hinder them from doing it, nor require them to do it ; the conſtitution therefore gives no right ; and the right is derived from the agreement of the members and is regulated by that agreement and not by the conſtitution.

"Equal in vote they are on official duties." That is not the queſtion but whether ſome duties do not belong to a preſident, ſpeaker, chairman, foreman which no other member ought to perform ; and thoſe duties riſing out of no conſtitution no law ; but the rule of order of the body. The diſcharge of ſuch duties is not a matter of conſcience on the aſſociate judge on which he is bound to ſpeak his opinion publicly. It is not a queſtion of right public or private. It is a queſtion of order concerning only the body of the court and ſubject to the control of that body not of any member of it. It is a matter of diſcuſſion among the members of the body.

The court may permit their preſident to do certain things which they do not permit any other member, and in doing ſo may leave the manner and the words to his diſcretion. The Senate may direct the thanks of this houſe to be given to a certain man. The words and manner may be left to the ſpeaker.

The court of Allegheny county permitted, and many other courts have permitted their preſident to introduce extraneous matter into charges to grand juries. Does it follow from this that they muſt permit every member. The point is not whether all the members be equal, but whether the body can control one member.

In this extraneous matter the language of the preſident is not the language of the court, it is only his own language ; it is always ſo underſtood, and the conſcience of no other

member is touched by it; nor does his duty bind him publicly to correct or ſupport it. For language on extraneous matter the preſident alone is anſwerable. If any member diſapprove of this practice or of any thing improper be ſaid under it, this is a matter of private diſcuſſion among the judges, not of public to the jury. The court have permitted it. The court may ſuppreſs it. The preſident to whom it is given, has a right to uſe it only while the court permits it. I gave it up when this one member diſſented from it; there is no reaſon that in diſcuſing, eſtabliſhing or ſuppreſſing this regulation the judge ſhould be in court or be heard by the public. All rules of order in their proceeding are framed by the judges in private.

This was the rule of order in Allegheny county nine years before Mr. Lucas became a judge.

In all matters relating to the immediate duties of any jury we have never hindered Mr. Lucas to expreſs his opinion. In every thing official he has been left free to expreſs his opinion, diſſent approve or enlarge.

Mr. Dallas firſt condemns extraneous matter in charges as altogether improper and unofficial, and then proves that Mr. Lucas has a right to uſe it, becauſe he has a right to all official duties. This is ſtrange reaſoning.

My argument is that no judge can claim it as a right, but courts may give it to one. They have given it to the preſident, but to no other member. He holds it by the permiſſion of the court only, and ſo long as the court permits it. No conſtitution, no law gives it to any other judge. It is not an official duty.

The prevention in Dec. 1800 is not before the Senate and can not now be judged of, nor any opinion or ſentence of this Senate now paſſed on it. I was obliged to prove it to ſhew that Mr. Lucas then knew the rule of order of the court.

In June 1801, there was no occaſion for Mr. Lucas to expreſs his opinion to the public on my charge of Dec. 1800. He had done ſo in Dec. 1800 in the newspaper, and this of his now read is not the ſame.

He had no inducement to expreſs any opinion in June 1801. My charge was free from extraneous matter, proper and full on the duties of a grand jury, and that ſubject only.

When Mr. Lucas perſiſted in violating a rule of order of the

court, what was I to do? Sit ſilent and ſee that rule broken! Liſten to what the whole court except himſelf had forbidden he ſhould ſay. It was a formal charge previouſly drawn up not relating to any immediate duty of the jury! I ſhould have inſulted the other judges if I had permitted the violation of a rule which they had all eſtabliſhed.

I did the only thing I could do, I left the court, leaving him at liberty to ſpeak if he pleaſed. Had he gone while I ſpoke, I ſhould not have deſiſted.

Members of Aſſembly have felt it their duty to leave the Houſe without a quorum to prevent an improper meaſure. The queſtion is not whether this be regular or not, but whether conſcientious or not; and if this tranſaction be without ill intention its legality is not now before the Senate; or if it were, unleſs it can be proved that I knew it to be unlawful, it is not impeachable.

It is the prevention in June 1801, and that only that is before the Senate. Was that unlawful? Did I know it to be unlawful? If not, no preceding circumſtances, nothing in the manner, nothing in the conſequences, can make it an offence. For this prevention only am I impeached. It is enough for me to ſhew that in my circumſtances a man of competent knowledge might honeſtly believe he acted right, unleſs it can be ſhewn, that I knew I acted wrong. An indictment never was uſed to try a diſputed right, neither can an impeachment.

But it is ſaid *Ignorantia juris neminem excusat.* This is true, but how does it apply to an officer acting in his official capacity? If an officer were to ſay, I knew not that the law forbade me to violate the duties of my office, this pretence of ignorance would not excuſe him. But if the rule of his duty was doubtful, and he honeſtly miſtook its true conſtruction, ſuch ignorance would excuſe him.

In the caſe put by the attorney general, in ſtealing a pocket handkerchief; if the perſon charged could ſhew that he had miſtaken it for his own, that he had one with ſimilar marks, but had not obſerved ſome diſcriminating circumſtances, he muſt be acquitted.

And ſo muſt I though this Senate ſhould think I entertained a falſe opinion of the law unleſs I did this wilfully or corruptly. This is well explained by chief juſtice Vaughan. I would know "ſaid that judge, whether any thing be more common than for two judges to deduce contrary

and oppoſite concluſions out of the ſame caſe in law? Is any thing more known than that the ſame author and place in that author is forcibly, urged to maintain contrary concluſions and the deciſion hard which is the right? Is any thing more frequent in the controverſies of religion than to preſs the ſame text for oppoſite tenets? How then comes it to paſs that two perſons may not apprehend with reaſon and honeſty what a witneſs, or many, ſay, to prove in the underſtanding of one plainly one thing; but in the apprehenſions of the other, clearly the contrary thing? Muſt therefore the one of theſe merit fine and impriſonment, becauſe he doth that which he cannot otherwiſe do preſerving his oath and integrity? And this often is the caſe of the judge and jury" Buſhel's caſe Vaugh. 141.

2. *The court was broken up riotously (as Mr. Dallas chooses to express it) and all subsequent proceedings are void.* This is no ſpecific charge againſt me. The Senate is not ſworn to try it and cannot give a verdict or judgment againſt me for it. I am not therefore bound to juſtify or anſwer it as lawful or unlawful and it can be conſidered only as evidence of ill intention.

Solemnities are uſual but not neceſſary to adjourn a court. Courts are often adjourned without them. Clerk may ſay the court is adjourned to ſuch a time. Any judge may ſay ſo.—Any perſon may ſay ſo by direction of the court. One judge may ſay it is my opinion that the court be adjourned to ſuch a time, and then go away, and if the other judges, ſay nothing and go away the adjournment is compleat. Mr. Lucas did ſo. He left the court immediately without publicly diſſenting. The adjournment *then was* compleat. This was either an adjournment or it was not. If it was an adjournment—all was well. If it was not an adjournment the court remained. Would any voluntary or accidental going out of the judges without intention to break up the court, be a breaking up of the court! Will any thing be a breaking up of the court but a ſeparation of the judges for that purpoſe! There is no danger that any proceedings of the court of Allegheny county in June 1801 will ever be held void.

The true queſtion is, did I go away to effect a purpoſe which I knew to be unlawful.

3. It is made part of the argument againſt me that *I have delivered political charges.* This is true ſir, and every thing

that I have done in this way is in print. If the approbation of the greateſt man in America be any evidence of their uſefulneſs—or if my publiſhing them be any evidence of my opinion of their innocence, none of them will ever be brought as proof of an ill deſign in me ; and this is the only uſe that can be made of them here. For the Senate will ſee that this is no ſpecific charge againſt me, I am not tried on it, and this Senate cannot convict or acquit me on this ground.

The time was that my doing this was thought uſeful. Who can ſay that ſuch time may not come again ! May I not hold out the example of danger and miſchief in other countries as a warning to ourſelves ? May I not point out the ſymptoms of an approaching ſtorm, before it burſt ?

As to the charge of December 1800, of which ſuch horrid account has been made, you have it from the recollection of Mr. Lucas, after an interval of two years. Is this to be relied on as a juſt ſtatement ? It was approved of by other of my aſſociates and men of moderation. I printed it. Would I have done this, if I had thought it ſuch as it has been repreſented here.

If I have ſupported, by any opinions of mine, the former adminiſtration, I am equally diſpoſed, in like manner, to ſupport the preſent, on all occaſions juſtified by my judgment and conſcience.

But I will not introduce altercation on the bench ; and I abandoned this practice when the diſapprobation of a ſingle aſſociate was manifeſted.

4. *The opinion of the ſupreme court* on the motion for the information is cited as an authority for this proſecution ; and a newſpaper printed in Mr Brackenridges houſe containing a ſtatement of this opinion marked in the handwriting of Mr. Lucas, " Mr. Brackenridge's ſtatement of the proceedings of the ſupreme court againſt Addiſon," is read as evidence of this opinion. This ſtatement deſerves no credit, becauſe both it and another newſpaper containing a ſtatement plainly made by the ſame hand, and a third newſpaper read by Mr. Dallas, plainly ſhew Mr. Brackenridge's enmity to me, his influence over Mr. Lucas, his operation upon him on other occaſions, and in the whole of this tranſaction in ſetting him on to deliver charges to jurie, in the motion for the information, and in the petitions which gave riſe to this impeachment. This newſpaper carries no credibility, nor is it any evidence that I ever knew the opinion of the ſupreme court.

There is a ſtatement by another judge very different from this, and far more credible.

It appears from Mr. Lucas' affidavit, that the caſe was not put fairly to the ſupreme court, therefore the opinion of the court in that caſe, is no authority in this.

From the argument of the attorney general, it appears the uniform uſage that the preſiding judge delivers charges to grand juries. From that argument and from the opinion of the court, it appears that the act complained of, was conſidered as *my* act. No man will believe that the chief juſtice uſed the harſh epithets which Mr. Brackenridge puts in his mouth againſt me, on an *exparte* affidavit which I had no opportunity to contradict.

The argument of the attorney general, and the words of the court, even as ſtated by Mr. Brackenridge, plainly imply that *I* ſtopt Mr. Lucas from addreſſing the jury *on their duties*; and that this would have been indictable, if done with an evil intention, and only if ſo done.

The fact is otherwiſe! *The court* ſtopt him from addreſſing the jury on things *not relating to their duties*. If either I or the court ſtopped Mr. Lucas in delivering matter to a jury not relating to immediate duty, no unlawful act was done.

It is queſtionable how far the opinion of one court can control the rules of order of another. But without reſting on this; no *exparte* opinions, no expreſſions by the bye, ſpoken by the wiſeſt judges, were ever conſidered as authorities.

But the authority of this caſe, on the only point on which they made a judicial deciſion, is deciſive in my favor. Admitting ſay they, that the facts are as Mr. Lucas has ſtated, they do not prove an offence. There is nothing in it which ſhews that an impeachment would lie againſt me. The contrary opinion plainly follows; for it ſtates that neither information nor indictment will lie, becauſe there was no malice, no evil intention made appear. If ſuch had appeared, the rule to ſhew cauſe would have been made, and if on it I could not have juſtified or excuſed, an information would have been ordered againſt me. The opinion of the court ſhews that an information and indictment are the ſame, and that neither of them lies but for an offence. Impeachment is like them, a proſecution for an offence, a miſdemeanor in office, an unlawful act done with an evil intent in official capacity. And for this the impeached perſon may alſo be indicted.

5. It is said that *your acquitting me establishes my right to send Mr. Lucas to gaol, to break up the court riotously &c.* It establishes no such right. No criminal prosecution can establish any right. It does not even establish that I acted lawfully. It can only establish that I acted without an ill intention. For unless you find an ill intention, you cannot convict. Such is the whole tenor of authorities and God forbid it should be otherwise. Make it otherwise and what follows? Every judge in Pennsylvania, must balance his office against his conscience. If he decide according to his conscience he may lose his office, if the Senate think differently. If he decide against his conscience he may preserve his office. Is this the state of mind in which you wish to place the judges when they are making up their determination? Such I trust has been the tenor of my whole official conduct as stated to you in evidence, and known in the western country, that no evil intention can be fairly inferred from this transaction.

In the whole of Mr. Dallas's argument and management of this prosecution, I have not found that candour which I would have expected from a man who respects his professional character. I expected that he would fairly admit that an information, an indictment, and an impeachment, are all criminal prosecutions founded on an offence which must consist of an unlawful act done with an evil intention.

I expected that he would fairly admit that no criminal prosecution, no action, no proceeding whatever can be maintained against a judge for an error in judgment; none unless he has acted wilfully wrong.

I expected he would have expressly declared that they meant to urge nothing as a specific offence that was not alledged in the articles of impeachment. Yet he has relied on "*political charges*," and "*Riotous breaking up of the court*," as unlawful acts, when he ought only to have considered those things as evidence of an evil intention in the unlawful act laid so far as it was connected with them.

I expected he would have abandoned the first article as unsupportable; as not stating any unlawful act; For where there is no unlawful act it is immaterial whether the intention be good or evil.

All this I think he would have done in any of the ordinary courts of justice, or he would have received the reprobation of the court and of his brethern of the pro-

ſeſſion. How far his conduct here be conſiſtent with reſpect for his own character is for him to judge.

If I have ſucceeded, as I truſt I have, in ſatisfying this Senate, that the articles of this impeachment are light; and that the examination of them ſhews no guilt, no unlawful act, no evil intention, no fault, no miſconduct, no miſtake; it may be natural to aſk whence the petitions againſt me and whence this impeachment?

As all information reſpecting the petitions was refuſed me laſt ſeſſion, I had no opportunity of enquiring into the characters of the petitioners. Many of them may have been the very dregs of the ſociety; they may have been picked up on the highway, or in taverns; ſtrangers, boys, and ſilly men; they may have neither known nor regarded what they ſigned; they may have been ſeduced by falſe pretences to ſet down their names. Who will ſay that all this did not take place! I am well informed that all this did take place. What meaſure ſo abſurd, that petitioners for it cannot be obtained! Sir, petitions can be got to burn this houſe, "the gorgeous palace, the ſolemn temple, the great globe itſelf, and all who it inhabit". Who does not know the groſs proſtitution of petition! The petitions ſhew the names and number of ſigners; but not the names and number of thoſe who refuſed to ſign, and reprobated the attempt as ſcandalous. And of the ſigners, I venture to ſay, nine out of ten would ſign a petition againſt the whole of this proceeding. After all what do the petitions amount to? Out of a diſtrict of nearly ſixty thouſand taxable inhabitants the ſedulous induſtry of two years has procured 680 ſigners to the petition againſt me! But ſuppoſing that the petitions ſhew a diſpoſition in many, to have me removed from office; that may be evidence not of my miſconduct, but of their enmity.

No man can be leſs qualified than I, for avoiding unpopularity. I have no taſte for intrigue, no diſpoſition for flattering the follies or paſſions of men; no propenſity to falſe arts; no deſire of revenge, to ſpur my invention of means to oppoſe my adverſaries. I am no hunter of popularity; no bender to the prejudices of the day. In a republican government, it ought to be deemed the honour of an officer, to diſcharge his duty with fidelity, regardleſs of favour or reſentment; to be guided by the laws and intereſt of the country, not by popular prejudices, paſſions, or opinions; and to purſue the public good, whether public favour followed it or not. On ſuch principles and conduct have I reſted my official reputation; and not on trimming

my ſails to the gale of popularity, or ſhifting my courſe with the tide of the times. And ſcorning to flatter any man, to court any man, or to yield to any man ; I reſted my ſecurity on the integrity and propriety of my official conduct. Such principles and conduct will always make enemies, and often be defenceleſs againſt them. How then could I be without enemies, and not need defence !

In leſs than the ſpace of twelve years, in the courts of that circuit, how many offenders muſt have been brought to juſtice : how many fraudulent perſons muſt have been expoſed ; how many diſappointed ſuitors muſt have been ſent away diſſatisfied ! Among all theſe, how many enemies muſt have ſprung up againſt me ?

Some years ago, as a judge of an election, I rejected the votes of aliens, and gave notice to an alien, who (knowing that he was an alien, and that his election would be oppoſed on that ground,) procured himſelf to be choſen a member of Aſſembly, that a petition would be ſent down againſt his admiſſion. He circulated a report, as falſe as it was ſhameleſs, that I had formed a ſcheme to exclude *all the Irish* from voting ; and circulated petitions to the Aſſembly againſt me. My only fault was protecting the laws of the ſtate from violation : but it made me many enemies.

The unfortunate law of 1792, opened the land office for the land weſt of the Allegheny river. Unfortunate I call it, becauſe it neceſſarily introduced diſputed titles : and, wherever diſputed titles to land exiſt, all morality, all integrity, and all confidence, will be baniſhed. Beſides the two claſhing titles, by warrant and by ſettlement, neceſſarily ſpringing out of the law, a variety of other claims, or a diverſity of thoſe not contemplated by the law, ſprung up. Claims, doctrines and opinions of the wildeſt nature, from the vague and ill defined terms of the law, were advanced ; and the whole country was filled with diſputes, paſſions, and breaches of the peace. A ſerious and important duty devolved on the court of Allegheny county, to put a rational and juſt conſtruction on this law, and form a ſyſtem of titles under it. In doing this, among ſo various claims, many perſons muſt have ſuppoſed themſelves injured, and every offended perſon would become an enemy. I had, however, the ſatisfaction to find almoſt every opinion, delivered by the county court, ſanctioned by the judges of the ſupreme court.

With all theſe and other ſources of enmity open againſt me, are petitions evidence of miſconduct ? Does not a preſumption in my favor ariſe from their not being more numer-

ous? Such has been the propriety of my official conduct, such its superiority over cenſure, ſuch (let me be indulged in ſaying it,) is the confidence of men of integrity and underſtanding, of the country in general, in me; that men otherwiſe unfriendly, men of all ſects and parties, openly profeſs their confidence in me as a judge, and their preference of me to any other.* Nor would thoſe petitions ever have exiſted, nor this proſecution ever been attempted; but for the enmity of a man, who would ſacrifice every thing reſpectable in life, to the gratification of his malice.

Unleſs I am very much deceived, I think it is impoſſible, that any reaſonable man can ſee, in this impeachment, any appearance of guilt, any appearance of illegal conduct, and ill intention, ſupported or exhibited. Where then lies my criminality! Where is any plain known rule of law violated by me! Am I to be judged by the opinions of others, which may be as erroneous as mine, without any ſettled known ſtandard, to try both! Wherever a man is tried for an act, which there was no previous, plain, known law to forbid, he is tried for that which is no offence; for it is no wilful breach of any exiſting law. Wherever the law lies concealed in the breaſt of the judges, and is only publiſhed after the tranſgreſſion of it is enquired into; the man charged as an offender is proceeded againſt without any law, and a law *ex post facto* is made, to puniſh that, which, when it was done, was no offence. If there be any law, any precedent for making what I am charged with an offence; why is it not produced! I never knew it, never heard of it: and ſhall I be puniſhed for offending againſt a law, which I never knew, never heard of, and no man can now ſhew me! Is this Senate to be converted into a ſtar chamber, and judge by arbitrary laws of their own making of propriety and impropriety of conduct, applying thoſe laws, *ex post facto*, to previous tranſactions. The Senate of next year may think differently from the Senate of this, and the Senate of the following year from both. No officer of Pennſylvania will be ſafe; and this chamber will be a trap or pit-fall, which whatever officer enters, will tumble into covered dangers, which no prudence could foreſee, and no innocence diſarm. The tyranny of the ſtar chamber in England will be revived in Pennſylvania, and puniſhments will be inflicted, not becauſe known laws have been tranſgreſſed, but becauſe the judges think, that, ſomehow, wrong has been done, though it was never known to be wrong, till they pronounced the ſentence. This, in my opinion, is the eſſence of tyranny, and the more inſulting as covered with the form of law.

* *See Appendix No.* III.

Let republican Legiſlators watch, leſt the firſt ſymptoms of tyranny, in a republican government, appear in the Legiſlature: for having the moſt power, it will have the moſt pride. Let them watch leſt the firſt victim, in its progreſs to tyranny, be the judiciary: for it is the moſt efficacious check on the legiſlature. While the judiciary can maintain its authority, (and it is of all the branches the moſt helpleſs to itſelf, but the moſt effectual to the others and to the people) liberty is ſafe. When it falls, liberty muſt fall with it. There is to be guarded againſt in the legiſlative branch, a tendency to pride, to a haughty aſſumption of ſuperiority over the other branches. While this ſubſiſts liberty muſt always be in danger: for, if this ſpirit be indulged and prevail, the whole power of government may be abſorbed in one branch, and arbitrary power will follow of courſe. Members of the legiſlature, who regard liberty, will rejoice to ſee men in the other branches of the government, who will not flatter them, who will not yield to them, who will oppoſe them. They ought to cheriſh and ſupport ſuch men, as the friends of liberty, and of republican government: for, in the ſpirited maintenance of the authority of each branch, conſiſts republican liberty. But if ever in a republican country the legiſlature, proud of its power and of its proximity to the people, with the power of impeachment and conſequent removal in its hands, take upon it to judge of the executive and judiciary according to its own opinions formed without any previous plain, and known rule of law; I venture to ſay, that no governor and no judge in that country can dare to ſay, that he will hold his office a day longer: the whole power of government will be abſorbed by the legiſlature; arbitrary power will be eſtabliſhed in that branch; and it and the ſtate may, like France, fall a prey to an intriguing demagogue, or a military uſurper.

Such conjectures may ſeem extravagant. Before mens hearts are corrupted by the pride of abuſed power, they ſhudder at the ſuggeſtion of iniquity, which, they will afterwards work with greedineſs. The ſervant of the king of Syria enquired of the prophet, (who, with the eye of ſpiritual viſion ſeeing into futurity, wept at the calamities, of which this man, ſo humble, would be the author;) "Whey weepeth my lord." The prophet anſwered; "Becauſe I know the evil that thou wilt do to the children of Iſrael; their ſtrong holds wilt thoſe ſet on fire, and their young men wilt thou ſlay with the ſword, and wilt daſh their childern, and rip up their women with child". Shocked at a picture ſo abominable of himſelf, and fired with an honeſt indignation againſt ſuch horrid cruelty, Hazael ſaid. "But what, is thy

ſervant a dog, that he ſhould do this great thing ?" When men enter into the path of iniquity, they cannot tell the length to which they will proceed ; and if they would reſtrain themſelves, they muſt ſtop at the entrance. Injuſtice is magical ground, on which they will be hurried along as by enchantment ; it is a whirlpool which will toſs them around till they are wrecked on a Scylla or Charibdis.

The governor, the other judges and officers of this ſtate may ſtand indifferent ſpectators of this proſecution. Some of them may even promote it, and think that it is only my trial, and that they have no concern or intereſt in my acquittal. But they are miſtaken ; it is their trial as well as mine. Is there one among them who can ſay, that he has done nothing more exceptionable than what I am charged with ? Is there one among them, who can produce more honourable teſtimonials of the propriety and uſefulneſs of their conduct in office ? Innocent as I know myſelf to be, and light as this accuſation againſt me muſt appear, if I be convicted on this impeachment, (I repeat it, and let it be remembered) there is not an officer in Pennſylvania ſafe.

" 'Twill be recorded for a precedent ;
And many an error, by the ſame example,
Will ruſh into the ſtate."

I view myſelf ſtanding in an important light before you, to plead, not my own cauſe only, but the cauſe of the whole judiciary, the cauſe of the whole executive ; and to claim the protection of the Senate for all the officers of Pennſylvania againſt the haſty paſſions of the houſe of repreſentatives. You are ſet here by the conſtitution, to check the raſhneſs of that houſe ; and, that you may perform this duty with more freedom, and be leſs influenced by the paſſions of the day, greater duration is given to your appointment. The power of trying impeachments is given to you, that officers may be judged by that branch of the legiſlature, which is leaſt dependent, and liable to the leaſt bias from popular prejudices. You are the branch of the legiſlature, to which more peculiarly the protection of the conſtitution, and of the other branches of government, from popular paſſions, is committed. Exert then your authority for their protection, or ye yourſelves may one day be voted uſeleſs. Beware of conſidering the prevailing clamour of the day, as the ſteady, ſolid, permanent voice of the people ; or the preſent domineering demagogue, as the people's ſteady permanent friend or favourite. Where is the example, in the hiſtory of antient or modern

times, of any one party long retaining power? The life of man is short; but, in that short period, what viciſſitudes do we experience! The party, which, one year, is triumphant, may be defeated and proſtrate the next; and the perſecuted may turn on the perſecutor, and avenge the injuries of the proud day of proſperity. Set not an example of converting your government to a ſhifting ſcene of giddy revolution, where every officer is but the pageant of a day, juſt ſhewing himſelf and vaniſhing. Never let an honeſt officer be trampled down in the triumph of a party; nor violate the ſacred principle of the independence of your judges, to gratify party vengeance. Compared to eternity, the duration of ſtates themſelves is but as the ſunſhine of an April morn; and the triumph of party is but the paſſing hurricane, marked only by its rapidity and deſolation. Above all, degrade not your own powers, or you will deſtroy them. Proſtitute not the power of impeachment to trivial occaſions, or you will render it contemptible. Reſerve it, as it ought to be reſerved, for *high crimes and misdemeanors*. "If they do theſe things in a green tree, what ſhall be done in the dry?" If you proceed by impeachment againſt innocent actions or miſtakes; what ſeverity have you beyond it, for corruption, for diſhoneſty, for groſs abuſe of power? If impeachment be uſed in caſes like mine, an impeachment by the Houſe of Repreſentatives will be conſidered as an hymn of praiſe, and a conviction by the Senate as a garland of triumph: Cenſure will be glory, and approbation diſgrace.

You act now in an extenſive theatre, and have the whole world as ſpectators and judges of your conduct. The faithful pen of hiſtory will deſcribe it to poſterity. What is done to me is done to the judiciary of Pennſylvania; and this tranſaction will derive importance from my ſtation. It remains for you to conſider whether this tranſaction will give dignity and character to you. View it not through the diſſembling medium of party ſpirit and preſent paſſion. Look at it, as it will be looked at an hundred years hence; when the paſſions and prejudices of the day, will be diſpelled like a morning miſt. If popularity were to be regarded in your deciſion, even there I have nothing to fear: for true eſtimable popularity I have. Though in a narrow ſphere, I can ſay with Lord Mansfield, "I wiſh popularity: but it is the popularity which *follows*, not that which *is run after*. It is that popularity which, ſooner or later, never fails to do juſtice to the purſuit of *noble ends* by *noble means*. I defy any man to point out a ſingle action of my life, where the popularity of the times had the ſmalleſt influence on my determinations." I thank God I have a more permanent and ſteady rule for my conduct, the dictates of my own breaſt. Thoſe

that have foregone that pleaſing adviſer, and given up their mind to be the ſlave of every popular impulſe, I ſincerely pity. I pity them ſtill more, if their vanity leads them to miſtake the ſhouts of a mob, for the trumpet of fame. Experience might inform them, that many who have been ſaluted with the huzzas of a crowd one day, have received their execrations the next; and many, who, by the popularity of the times, have been held up as ſpotleſs patriots, have nevertheleſs appeared upon the hiſtorian's page, when truth has triumphed over deluſion, as the aſſaſſins of liberty."*

Your deciſion in this caſe will be recorded in hiſtory; and, for your deciſion, you are anſwerable, not only to thoſe who now live, but to poſterity. At that tribunal I have nothing to fear. The fermentation produced by perſonal malice will ſoon evaporate, and my character will appear in its true light. Socrates, Phocion, Cicero, Sidney and Strafford, fell by the public executioner. Ariſtides, Scipio and Clarendon, were baniſhed. Impartial hiſtory has done juſtice to their memory, and to the memory of their accuſers. Who is there in this Senate, that would not prefer the place of thoſe perſecuted men, to that of their perſecutors!

But you are beſides anſwerable to God. You are not, as the Houſe of Repreſentatives may have thought themſelves, acting in a looſe diſcretion, without any law but your own will. You act under the immediate ſanction of an *oath*, and, before you can ſay that I am *guilty*, you muſt have evidence to ſatisfy you, that I have committed *an unlawful act, with an evil intention*, that I have been guilty of corruption, partiality, or wilful injuſtice; and you muſt pronounce my doom, on the ſame principles, on which you would be willing to receive your own, from your *great God* and *judge* at the *laſt day*.

## Mr. M'KEAN.

*MR. SPEAKER, AND GENTLEMEN OF THE SENATE,*

The polite and patient attention, which this honorable court has been pleaſed to pay, as well to the counſel who has preceeded me on the part of the proſecution, as to the gentleman who is the object of accuſation, induces me to hope that the ſame indulgence will be extended to me. Much time has been conſumed in the inveſtigation of this cauſe: although conſumed, it has not been waſted, for that time cannot be conſidered as miſapplied which has been expended in a diſcuſſion of ſo much importance, as it affects the rights and character of the defendant as a judge; the officers of the

* *Lord Mansfield, in the King's bench, and in the House of Lords.*

government in general; the rights and powers of the houſe of repreſentatives; the rights, juriſdiction and power of the ſenate, and the rights and ſafety of the people.

As much extraneous matter has been introduced by Mr. Addiſon, it may be neceſſary to notice many things that have been ſaid, although not relevant to the cauſe under conſideration, and many aſſertions have been made without the leaſt evidence to ſupport them; indeed, it ſeems to have been intended, and expected, by the defendant, that we ſhould take his aſſertions and proteſtations as evidence, and that the members of this ſenate ſhould found their judgment upon his ſtatement of the facts and the law.

You have been told, and the aſſertion has been repeated, that theſe charges againſt the defendant originated in malice. What proof has been given to ſupport this aſſertion? It is not in evidence, nor is it even inſinuated, that the houſe of repreſentatives or the managers of this impeachment have been actuated by malice or improper motives. Has it appeared that the witneſſes on the part of the proſecution were influenced by malicious or improper motives? No, ſir; where or on whom then, is this charge to reſt? The learned gentleman has exempted from his cenſure the members of this ſenate and the counſel for the proſecution. Who then is the object of this reproach? Sir, you have been told the charges againſt the defendant originated with a learned judge reſident beyond the Suſquehanna. What evidence is there to warrant this declaration? How is it to be juſtified? If there is no evidence of the fact on which he could reſt the aſſertion, why was it made, and what was the motive? Was it not with a view to prejudice the minds of the members of this tribunal, and by inducing them to believe, that the proſecution was inſtituted to gratify perſonal animoſity, and not with a view to public good; that the witneſſes, if not corrupt, were influenced, and therefore not to be credited?

It has been ſaid, his object was not to impeach the credibility of the witneſſes. Did not the defendant avow that he made the obſervation to weaken their teſtimony? I refer to the notes, and the recollection, of the members of the ſenate, of the obſervations made by the defendant; to the queſtions put by him, to the witneſſes on the part of the proſecution, and to the witneſs produced in his behalf, to ſhew that it was his intention to impeach their credibility. When he ſaid that a learned judge adviſed and directed this proſecution from motives of perſonal enmity, did he not mean to inſinuate that corrupt or improper means had been uſed to influence the witneſſes, and that the malice of one individual

had produced misrepresentation and perjury in others? What has been the conduct of the witnesses examined before the senate? Have they shewn any disposition to conceal the truth, or to colour any transaction? Has their conduct been marked by passion or resentment? Did not Mr. Lucas (who had been ill treated by the defendant in open court in Allegheny) when representing the behavior of Mr. Addison, on the morning of the 22d June 1801 (and an opportunity then offered, if he had been disposed, to misrepresent) state Mr. Addison's language, as it was, mild and persuasive? What has Mr. Lucas stated in his testimony, that has not been corroborated by the testimony of the other witnesses, even the witness for the defendant? During the examination of Mr. Lucas, the language, manner and voice, of the defendant, sufficiently manifested that he was not free from malice and resentment. It has been said of this witness, that his conduct was censured in his own county; that he was vain and conceited; and that his views were, to destroy all harmony in the court, and to promote disorder and discord. What is the evidence in support of this allegation? The people of Allegheny must have known his conduct on the bench, his public and private character. What opinion do they entertain of his public conduct and private character? Have they censured his conduct? At the last election he was chosen a member of congress for the district in which he resides. In this way have the people of this district expressed their opinion, and have furnished a complete and satisfactory refutation of the defendant's assertion." Was there any thing in the conduct of the other witnesses to weaken their credibility? Have they been corrupted, or were they actuated by passion or resentment? Has it been proved that malice or ill-will towards the defendant influenced their actions? Has one of them stated a material fact which another has contradicted, or a material circumstance which has not been corroborated by the witness for the defendant, if present at the transaction? Mr. M'Dowell's testimony alone proves the charges laid in the articles of impeachment. This censure cast upon the witnesses is of a piece with many other parts of the defence which I shall have occasion to notice. To excuse himself, the defendant criminates another, not prosecutor or witness, I mean judge Brackenridge. Is he conscious that his conduct, towards that gentleman, has been such as might justly excite his resentment? And does he fear that which he knows he deserved? Conduct so unworthy the gentleman is not imputable to that judge. When the motion for an information was before the supreme court, judge Brackenridge did not take a part in the decision; yet there was nothing to

prevent his expreſſing his ſentiments upon the conduct of the defendant, but the delicacy of his own feelings. Let, then, (and enough has been ſaid to ſhew the propriety) all theſe unwarranted aſſertions of the defendant be diſregarded.

We are told by the learned gentleman that it was a moſt arduous taſk to wade through the rude and undigeſted maſs of obloquy delivered by my learned friend. Whether the arguments he urged with ſo much energy, were a rude, undigeſted maſs, I ſhall chearfully ſubmit to the deciſion of this honorable body. It is eaſy to cenſure eloquence you cannot equal, and it is ſometimes practiſed to avoid an anſwer when ingenuity cannot furniſh it. He is ſaid to have heaped opprobrium upon opprobrium on the defendant. Is the obſervation well founded? Did a ſingle expreſſion, of a perſonal nature, or reflecting in any manner on the private character of the defendant eſcape from his lips? What epithets were uſed that the occaſion did not call for, and were not warranted by the evidence, that were not applied to the offence, and not perſonally to the offender? It is ſaid, the ſame thing has been frequently repeated. If my colleague has repeated the ſame obſervation, or adverted a ſecond time to the ſame caſe or principle, he did no more than what is uſual, and often indiſpenſibly neceſſary, in public ſpeaking. If it be wrong, the learned defendant is not exempt from the ſame cenſure; he has practiſed what he has pronounced to be improper. He has told us repeatedly, how virtuous and learned he is; how induſtrious, how indefatigable he has been to acquire the knowledge requiſite to fill his dignified ſtation; that the popularity of the times had no influence on his determination; that he had the beſt popularity, the praiſe of the wiſe and good, thereby inſinuating that thoſe who do not approve his conduct are neither wiſe or good. It is not by an appeal to your paſſions, nor by bold aſſertions, or ſolemn proteſtations, that I ſhall endeavor to influence your judgments. My attention ſhall be directed to the evidence, the conſtitution and the laws. On theſe I ſhall rely; and if thus founded, I cannot ſubſtantiate the guilt of the defendant, no other means will be uſed, and I hope the defendant will be acquitted.

You have been told, and told truly, that this trial has been mentioned in newſpapers in a way calculated to excite prejudice and influence the deciſion of this court againſt the defendant. Theſe publications are highly cenſurable. They ought not, and I am ſure will not, have any effect upon the minds of the members of the ſenate. While I admit that the publications referred to were very improper, I muſt obſerve that it is more cenſurable, by a direct communication

with the members of the ſenate, to endeavor to influence their deciſion. This attempt, I have reaſon to believe, has been made; but, will not, I am confident, produce the effect intended. This court will, I have no doubt, in forming their deciſion, be governed by their oaths, the conſtitution, the evidence and the law.

You have been told that your deciſion in this caſe will be recorded in hiſtory, and for your deciſion you are anſwerable not only to thoſe who now live, but to poſterity; and at that tribunal the defendant has nothing to fear.

It is true, your deciſion will be recorded: it is alſo true, that the evidence, and the law, produced to ſupport the charges will be recorded; and if it ſhould appear that the charges were well founded, and the defendant acquitted in violation of your oaths, you will be anſwerable to God and your country for your deciſion. An improper conviction or acquittal will be equally injurious to your country and to your reputations.

The learned defendant has told you that it is towards twelve years ſince he was appointed preſident, an appointment not ſolicited by him. It may be he did not ſolicit the appointment; but others may have applied for him. He tells you he accepted it with cheerfulneſs, becauſe he thought it accorded with the wiſhes of the bar, and of the people, and that he could be uſeful. This may be all true; but as he ſaid to judge Lucas, 'tis not to the point in iſſue. Although he may have been uſeful on ſome occaſions, he may have done much that was wrong. He may have brow-beaten witneſſes, borne down counſel at the bar, intimidated juries, arbitrarily controlled his aſſociates, oppreſſed and injured the ſuitor, degraded the court, ſubverted the laws of his country, and violated the rights of the people. I do not ſay all theſe inſtances of improper conduct have taken place in his judicial adminiſtration; but all may; and that ſome have, is in evidence before you.

It is not the exerciſe of an upright judgment in caſes of *meum* and *tuum* that alone conſtitutes a good judge.

It is ſaid of the judges in England, that in all queſtions of property between individuals, no judges can be more upright, no deciſions more impartial. But in caſes where the crown or party politics are concerned, it rarely happens that the influence of the crown does not regulate the deciſion. What has been the ſituation, for many years paſt, of every defendant who was charged before their courts with the publication of a libel? The paſſions of the miniſters ſeem to have

governed their courts of law. Mr. Holt, a printer, was impriſoned two years for re-publiſhing in 1793 the duke of Richmond's letter to Col. Sherman, which had been printed in 1783 by Mr. Pitt. An act which was proper and patriotic, when done by Mr. Pitt in 1783, became criminal in Holt, under Mr. Pitt's adminiſtration, in 1793. Thus we ſee learned, honeſt and impartial judges in England in caſes between private citizens, where the miniſter interferes, may be influenced: for ſurely that could not be criminal in Holt in 1793 which was praiſe worthy in Mr. Pitt in 1783. The glare of intereſt plays upon their paſſions and warps their judgments. Although independent in their ſtations, they look to promotion. They might ſay with the defendant, that what they did was right, and under the ſame impreſſions they would do the ſame thing again; but, if miſtaken, it was an error in judgment merely, for which they were not reſponſible. Perhaps it may be aſked, how this applies to the defendant? Could the defendant have expected promotion by the adminiſtration of 1801? I anſwer, no. But what was the proſpect in December 1800, and before the event of the election for preſident of the United States was known? Then the hopes of promotion may have influenced his conduct, and it may have been well underſtood, if not ſaid, if you exert yourſelf to ſupport the preſent adminiſtration, and we are ſucceſsful, you ſhall riſe. Allured by this proſpect, he was willing to believe that he was honeſtly and uprightly diſcharging his duty, when he delivered his party charges, and prevented any obſervations by his aſſociate in reply.

The gentleman has ſaid in the language of complaint that he has been compared to judge Jefferies. Judge Jefferies was mentioned by Mr. Dallas as an inſtance of a good judge in all queſtions of property between private individuals; but tyrannical and overbearing where the crown was a party, and cruel in ſtate proſecutions. Upon queſtions of property merely, Jefferies was an able judge. It has not been ſaid, we not mean to inſinuate by the compariſon, that the defendant by unjuſt convictions or cruel ſentences has deprived the child of his parent, the wife of her huſband, or wrung the tear of diſtreſs from the widow, or the orphan's eye. But we do ſay, that in ſome caſes where party had its influence, as with Jefferies, his mind was warped, and his judgment erroneous and unjuſt.

The defendant has told you, that if any man had ſaid in the weſtern country, that he was a violent party man or a tyrannical judge, he would not be conſidered as very wiſe or very prudent. Why this threat? If the obſervation is juſt, it was wiſe and prudent and proper, and our duty to make it.

If true, why not equally wiſe and prudent to ſtate the fact in the weſtern country. Are not the maxims of wiſdom, and the rules of prudence, the ſame in Allegheny and Lancaſter counties? The charge muſt be equally true and founded whether it is made in the one or the other county. And where force or improper conſequences are not to be apprehended, it cannot be, always, unwiſe or improper to ſpeak the truth. Have we reaſon to believe, that perſonal violence would have been uſed if the obſervation had been made in the weſtern country? I hope not. But be that as it may, I will ſay, and to the honor of the ſtate it will be evinced, (in the language of the defendant) that here the preſident of a court, charged with an offence, will have his conduct examined with as much zeal, as any other offender againſt the laws of the commonwealth. The fear of perſonal violence will not deter counſel, who act from a ſenſe of duty. Sir, I hope I may here be permitted to ſay, for my profeſſional brethren, (as the learned defendant has ſo frequently eulogized his judicial character) that the protection of property, of reputation, the ſecurity of perſonal rights and public liberty, have been as ably advocated, and ſupported with as much zeal, by the bar as by the bench.

From the remark of the defendant, it would not be conſidered (in the weſtern country) as wiſe or prudent even to queſtion the judicial opinions of the preſident. Yet, if perſonal violence was not to be apprehended, I know but one other ill conſequence that would flow from the exerciſe of that right: that, it is true, might be the ruin of the individual. The advocate who ſhould thus incur the reſentment of the judge, might be treated with contempt, his legal talents doubted or denied, his clients witneſſes brow beaten, his clients inſulted and abuſed, juſtice ſtifled, and his cauſe of courſe loſt.

The natural conſequence would follow, that counſel would not be employed whom the judge would not treat with decent attention of probably not hear at all. He would then be obliged to become the time-ſerving tool of the judge, or change his profeſſion, or leave his country.

Is this all fancy? Are there not ſome who hear me, and who know, that witneſſes have been brow beaten, jurors intimidated, and that counſel have been obliged to abandon their profeſſion or leave that country.

The judicial character of Jefferies has been noticed. I will mention another. It is well known that lord chancellor

Bacon was impeached for bribery and corruption. The charges were proved ; not only proved, but not denied : yet in his defence, it was contended, that the bribes had not influenced his decisions ) that his decrees were equitable and just, and so much so, that no decree made by him was ever reversed as unjust. The defence, although true in fact, did not procure his acquittal. He might have said with the defendant, that he had not failed in his duty, he was conscious of no crime ; that if he had erred, it was a delusion he could not overcome ; that he had no *evil intention*, and, therefore, he was guilty of no offence.

The defendant has told you that the favorable opinion entertained of him by the people of his district has ripened into confidence. What proof have we to support his assertion ? He has offered the cestificates of his associate judges and others. This court has refused to hear them read in evidence, or to permit them to be used in argument. Yet he has referred to their contents to support his character. What would have been the conduct of the defendant, if a gentleman of the bar had acted thus, in a cause trying before him as president of the common pleas ? If the counsel had attempted to use in argument, papers which the court had rejected as evidence, the learned president would have reprimanded him ; if the attempt was repeated, he would have ordered him to take his seat, and at least have threatened to commit him. But why are these certificates produced ? If his friends are so numerous and so sincere, why are they not here ? A judge so high, as the defendant represents himself to be, in the estimation of his associate judges and in the opinions of the wise and goed men of his district, could certainly have prevailed upon some, at least, to appear before this court, to support by their testimony his official conduct and character.

Popularity, he has said, he views as a secondary object, and when acquired, as it too often is, by unworthy means, a contemptible object. The defendant has not practised upon his own precepts. He has taken unworthy means to acquire popularity by traducing the characters of others, even in his charge from the bench, and by preventing his associate judge from endeavoring to counteract the effects of his political denunciations.

## IN SENATE.

WEDNESDAY, JANUARY 26.

The ſenate reſumed the conſideration of the articles of accuſation and impeachment againſt Alexander Addiſon.

Mr. Rodman called for the reading of the articles of accuſation and impeachment, exhibited by the houſe of repreſentatives, againſt Alexander Addiſon, and the ſame were read.

It was moved by Mr. Barton, ſeconded by Mr. Jones, that a queſtion be taken on the articles ſeparately.

The queſtion on the motion being put, it was determined in the negative.

The ſenate decided that the queſtion ſhould be taken on the articles jointly.

The ſpeaker then ſtated the queſtion as follows:

"Is Alexander Addiſon guilty, or not guilty of the charges contained in the articles of accuſation and impeachment, exhibited againſt him by the houſe of repreſentatives, juſt read," and

Upon the members being called to anſwer thereto, they declared as follows:

| | |
|---|---|
| Matthias Barton, ſaid | not guilty. |
| James Ewing, | not guilty. |
| William Findley, | guilty. |
| James Gamble, | guilty. |
| James Harris, | guilty. |
| Jonas Hartzell, | guilty. |
| John Heiſter, | guilty. |
| Thomas Johnſton, | not guilty. |
| John Jones, | not guilty. |
| John Kean, | guilty. |
| Preſley Carr Lane, | guilty. |
| Chriſtian Lower, | guilty. |
| Aaron Lyle, | guilty. |
| William M'Arthur, | guilty. |
| Thomas Mewhorter, | guilty. |
| Thomas Morton, | guilty. |
| John Pearſon, | guilty. |
| John Porter, | guilty. |
| William Reed, | guilty. |
| John Richards, | guilty. |

| | |
|---|---|
| William Rodman, ſaid | guilty. |
| John Steele, | guilty. |
| Robert Whitehill, | guilty. |
| Samuel Maclay, *Speaker*. | guilty. |

Whereupon,

The ſpeaker declared that twenty members had ſaid guilty, and four members had ſaid not guilty, and

That Alexander Addiſon is accordingly duly convicted of the charges contained in the articles of accuſation and impeachment exhibited againſt him by the houſe of repreſentatives.

A letter from Alexander Addiſon was read, accompanied by the certificates of his character and conduct as referred to in the letter.

The letter was read as follows, to wit: and laid upon the table.

*Lancaſter, January* 26, 1803.

SIR,

I beg leave to ſubmit to the ſenate, whether any judgment can be given on the firſt article of the impeachment againſt me, ſeeing it alledges no unlawful act.

During the trial I did not think it fair to argue from the degree of puniſhment. Now when the queſtion of guilt is aſcertained, it is fair to ſtate the opinion which I have ever entertained, and which to me appears ſelf evident.

Removal and diſqualification is the extremity of puniſhment which the ſenate can inflict on any impeachment. The puniſhment may be as much leſs as they judge proper. It may be removal and diſqualification to hold only certain offices. It may be removal only. It may be ſuſpenſion for a moment. It may be only reprimand. The ſenate will no doubt proportion the puniſhment to their ideas of guilt, for if they proceed to the extremity in caſes that may be mere miſtake, what means would they have to mark their deteſtation of groſs corruption, and the worſt kind of miſdemeanor in office.

If I be removed from this office, I have no deſire for another, for I know not how I could behave better in any other, than I think I have done in this. But if to removal be added diſqualification, I know not but ſuch conſtruction may be put on it, though I think unreaſonably, as it would put it out of my power to purſue a profeſſion neceſſary for competent proviſion for my family, and amount to an expulſion of me from the

ſtate. If diſqualification ſhould be thought of, let it then only be a qualification for any office to which an annual ſalary is annexed, or any other limited diſqualification which the ſenate may approve.

I have only further to ſuggeſt whether the ſame number of members be not neceſſary to fix the puniſhment as to aſcertain the guilt.

I offer for the inſpection of the ſenate, certificates of my character and conduct.

I am with due reſpect,
Your moſt obedient ſervant,

ALEX. ADDISON.

*Hon. Samuel Maclay, esq.*
*speaker of the senate.*

Mr. Barton called for the reading of the certificates which accompanied the letter from Alexander Addiſon.

The queſtion being put, "ſhall the certificates preſented by Alexander Addiſon, be read?" was determined in the negative.

Thereupon,

Ordered, That the ſaid certificates be returned to Alexander Addiſon, by the clerk.

Moved by Mr. Rodman, ſeconded by Mr. Mewhorter,

Reſolved, That the ſentence to be pronounced on Alexander Addiſon, be as follows, to wit:

"Removal from the office he now holds, and diſqualification to hold any office of honor, truſt or profit, under this commonwealth."

On motion of Mr. Pearſon, ſeconded by Mr. Kean, and

Agreed, That the further conſideration of the preceding reſolution, be poſtponed in order to introduce a ſubſtitute which Mr. Pearſon read in his place.

The queſtion on the motion being put, was determined in the affirmative.

Mr. Pearſon preſented the ſubſtitute to the chair, and th ſame was read as follows, to wit:

Reſolved, That the ſentence on Alexander Addiſon be removal from office, and diſqualification to hold any office in ſu-

ture within this commonwealth, which is created by a commiſſion from the governor, and

That the ſpeaker of the ſenate ſhall pronounce the ſaid ſentence at three o'clock this afternoon, in the chamber of the houſe of repreſentatives.

On motion of Mr. Findley, ſeconded by Mr. Mewhorter, and

Agreed, That the reſolution be amended, by adding next after the word office, where it laſt occurs the words " in the judiciary."

On motion of Mr. Whitehill, ſeconded by Mr. Barton,

Agreed, That the further conſideration of the reſolution be poſtponed for the preſent.

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On Thurſday the houſe of repreſentatives being in committee of the whole, for that purpoſe, and the members of the ſenate being introduced, the ſpeaker of that body, pronounced ſentence againſt judge Addiſon, as follows:

" That Alexander Addiſon, preſident of the ſeveral courts of common pleas, in the fifth diſtrict of this ſtate, ſhall be, and he hereby is removed from his office of preſident aforeſaid, and alſo is diſqualified to hold and exerciſe the office of judge, in any court of law within the commonwealth of Pennſylvania."

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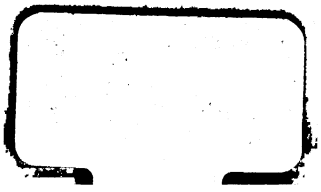
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